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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
VS. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 12 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistant District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Tuesday, May 7, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

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P R O C E E D I N G SMay 7, 2024

(Court in session at 9:22 a.m.)

(Defendant present. Jury present.)

THE CLERK: 22-117, the Commonwealth versus Karen Read. Would counsel identify themselves for the record?

MR. LALLY: Adam Lally, for the Commonwealth. Good morning, Your Honor.

THE COURT: Good morning, Mr. Lally.

MS. MC LAUGHLIN: Good morning, Your Honor. Laura McLaughlin, for the Commonwealth.

THE COURT: Good morning, Ms. McLaughlin.

MR. JACKSON: Good morning, Your Honor. Alan Jackson, for Ms. Read.

THE COURT: Good morning, Mr. Jackson.

MS. LITTLE: Good morning, Your Honor. Elizabeth Little, also on behalf of Ms. Read.

THE COURT: Good morning, Ms. Little.

MR. YANNETTI: Good morning, Your Honor. David Yannetti, for Karen Read.

THE COURT: Good morning, Mr. Yannetti. Good morning, Ms. Read. Good morning, jurors.

So I apologize for the delay this morning. What I'm going to start doing -- we don't want to

1 keep you folks waiting. Sometimes there's traffic
2 or other reasons that we are delayed. Rather than
3 reporting at 8:20 in the morning, I'm going to let
4 you report at 8:30. Okay. We'd rather you have us
5 waiting than we have you waiting.

6 I do have to ask you those three questions:
7 Was everyone able to follow the instructions and
8 refrain from discussing this case with anyone since
9 we left yesterday?

10 Everyone said yes or nodded affirmatively.

11 Were you also able to follow the instructions
12 and refrain from doing any independent research or
13 investigation into this case?

14 Everyone said yes or nodded affirmatively.

15 Did anyone happen to see, hear or read
16 anything about this case since you left yesterday?

17 Everyone said no. Okay. Thank you very much.

18 Could we have Sergeant Goode, please?

19 Whereupon,

20 SEAN GOODE, Resuming

21 having been first duly sworn, was examined and
22 testified under oath as follows:

23 THE COURT: Good morning.

24 THE WITNESS: Good morning.

25 THE COURT: Are we all set?

1 MR. YANNETTI: May I proceed, Your Honor?

2 THE COURT: Yes.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. YANNETTI:

5 Q Good morning, Sergeant.

6 A Good morning.

7 Q Sergeant, you are familiar with the key swipe
8 system at the Canton Police Department?

9 A Yes.

10 Q Could you explain to the jury how that works?

11 A So police officers are issued it looks like a
12 credit card. I have it in my wallet. Anytime I enter
13 or leave the police department, the exterior door going
14 out the back, there is a key scan you put up to it to
15 unlock the door to come in. When you leave, you don't
16 have to do it. But, if you need to go into the booking
17 area, you have to scan yourself in and out and, to get
18 out of the sally port, you have to scan in.

19 Q Okay. Just try to keep your voice up --

20 A Yes. Sorry.

21 Q -- so these last few jurors can hear you.

22 How many officers on your department have
23 those keys that can be swiped?

24 A I would believe all of them.

25 Q Okay. And how many -- or strike that.

1 Do you know how this information is stored at
2 the Canton Police Station?

3 A I do not. I don't know the software, but I
4 believe it's recorded anytime we would come and go.

5 Q Okay. And you say you believe that it's
6 recorded at the time that the information is obtained?
7 In other words, somebody key swipes in and that
8 information is stored, you believe, at the Canton
9 Police Station?

10 A I don't know the software. So I wouldn't be
11 able to give you an educated response to that.

12 Q And do you, yourself, as a sergeant, have
13 access to the key swipe data, or is that limited to
14 certain officers at the department?

15 A I don't believe I have access to that. I've
16 never accessed it.

17 Q You've never accessed it. Okay.

18 MR. YANNETTI: Your Honor, we do have a
19 stipulation between the parties if the Court will
20 accept it to introduce the key swipe records from
21 January 29th, 2022.

22 THE COURT: Okay.

23 MR. YANNETTI: I would offer that as the next
24 exhibit.

25 THE COURT: Any objection, Mr. Lally?

1 MR. LALLY: No, Your Honor.

2 THE COURT: Subject to redaction --

3 MR. YANNETTI: Yes. We have redacted them.

4 The Court can certainly take a look to make sure we
5 complied.

6 THE COURT: Have you all agreed to the
7 redactions?

8 MR. LALLY: May we approach just as to that,
9 Your Honor?

10 THE COURT: Yes.

11 (Whereupon, there was a sidebar conference as
12 follows:)

13 MR. LALLY: So, Your Honor, I'm a little
14 confused, but Ms. Little grabbed me right before.
15 First, I apologize for my tardiness this morning.
16 Ms. Little had referenced to me just before the
17 Court came out that they had blacked out something
18 to do with *Tuey* materials. I'm just a little
19 confused on that.

20 THE COURT: Okay. So I --

21 MR. YANNETTI: I'm not going to be showing
22 these to the jury now. If there is an issue with
23 redaction --

24 THE COURT: All right. They can come in
25 later.

1 MR. YANNETTI: Well, I'd like them admitted
2 now, if I can, but subject to whatever redaction
3 before the jury ever sees them.

4 THE COURT: They will remain here. I'm not
5 admitting them. I have some leeway on admitting
6 exhibits.

7 MR. YANNETTI: Of course. I know.

8 THE COURT: Especially on cross-examination.

9 MR. YANNETTI: I know

10 THE COURT: Okay? So I'm not admitting them
11 because we have to make sure all records are
12 redacted. I have no doubt you'll be able to get
13 them in, just not right now.

14 MR. YANNETTI: Okay.

15 THE COURT: So we will mark this for
16 identification.

17 (Whereupon, key fob swipe records were entered and
18 marked Exhibit "R" for Identification.)

19 THE COURT REPORTER: Marked for
20 identification, Your Honor.

21 MR. LALLY: Your Honor, I'm sorry.
22 (Whereupon, the sidebar conference continued.)

23 MR. LALLY: All I wanted to say is I don't
24 know where those came from because I don't recall
25 that being in the material.

1 THE COURT: Okay. So let's get in with the
2 evidence. We can discuss this.

3 MR. LALLY: Well, I believe it's already in
4 one of the exhibit books as far as the copies that
5 I got from Canton P.D. and I provided to counsel.
6 But I don't know where that came from.

7 THE COURT: Okay. So it's not in evidence.
8 It's marked for identification.

9 MR. LALLY: Thank you.

10 (Whereupon, the sidebar conference concluded.)

11 BY MR. YANNETTI:

12 Q Okay, sir. So you recall when we broke
13 yesterday I had broached the topic of whether your
14 police report had been altered. Do you remember me
15 asking you about that?

16 A Yes, I do.

17 Q Now, given that I had raised that with you,
18 after you left the stand and before you now took the
19 stand today, did you go over your report?

20 A My police report?

21 Q Yes.

22 A Yes.

23 Q Were you looking for anything specifically?

24 A No.

25 Q How long did you take to review that report

1 between yesterday and today?

2 A I scanned over it.

3 Q A few minutes?

4 A Sure. Yes.

5 Q Have you spoken to anybody about your report?

6 A No.

7 Q Nobody from the Canton Police?

8 A No.

9 Q Do you recall that I had asked you about the
10 fact that one name had not been completely spelled out
11 in terms of the first name, right?

12 A Yes.

13 Q And you had, I believe, indicated that
14 Sergeant Lank was the one that altered that or added
15 that to the report?

16 A Not altered. So he was the one that got those
17 names so when he entered his report, I believe he would
18 enter those.

19 Q Okay. So he entered that into your report,
20 correct?

21 A Anybody writes a supplemental if you have the
22 authorization, can enter who you speak to to add those
23 names. I only spoke to Ms. Roberts, Ms. Read and
24 Ms. McCabe that morning.

25 Q Okay. But the report has your name on it,

1 correct?

2 A Yes.

3 Q Did you speak to anybody from the prosecution,
4 either Mr. Lally or Ms. McLaughlin or anybody else from
5 that office about this issue?

6 A No.

7 Q You would agree with me that it is important
8 when you're writing a police report to be transparent,
9 correct?

10 A Yes.

11 Q You want to be clear, correct?

12 A Yes.

13 Q You do not want to mislead the reader into
14 believing something that is not true, correct?

15 A Yes.

16 MR. YANNETTI: Could I see "P" and "Q" for
17 Identification, please? Thank you, sir.

18 May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. YANNETTI:

21 Q I am showing you first "P" for identification.
22 You identified that yesterday, correct?

23 A Yes.

24 Q We went over with the jury the five bits of
25 information that are up at the top of the report,

1 starting with the incident number, correct?

2 A Yes.

3 Q You had indicated again Incident 22-87-0F?

4 A Yes.

5 Q Call 22-449?

6 A Yes.

7 Q Date and time report, January 29th of 2022 at
8 6:08?

9 A Yes.

10 Q And the report date and time was January 29th
11 of '22 at 8:24 a.m., correct?

12 A Yes.

13 Q Reporting Officer Sean Goode, correct?

14 A Yes.

15 Q I'd like to show you now what has been marked
16 "Q" for Identification, and you can hang onto "P" if
17 you'd like.

18 With regard to those bits of information --
19 oh, first of all, let me have you identify "Q" for
20 Identification. I'm sorry.

21 A Yes. I'm reading "Q."

22 Q Okay. What is "Q" for Identification?

23 A Exhibit "Q."

24 Q Right. What is the actual document?

25 A We call this a face sheet.

1 Q Okay. And, with regard to "P" for
2 Identification, that's also a face sheet, correct?

3 A Yes.

4 Q They appear to be nearly identical, correct.

5 A Correct, except I'm looking at the top right
6 corner. One says 1/30/2022 and the next would be
7 10/25/2022.

8 Q That is the print date of the report, correct?

9 A Okay. I don't know.

10 Q So regardless of when those two face sheets
11 had been printed, ignore that. With regard to the
12 information about the incident number and the date of
13 the report and the date of the incident and the
14 reporting officer, those appear to be identical,
15 correct?

16 A Correct.

17 Q Now, with regard to "P" for Identification,
18 which is the first report that you were shown, and you
19 were shown that yesterday and now you have it in front
20 of you, there is a photo on the right side of that
21 report, is there not?

22 A There is.

23 Q Do you know what that photo is of?

24 A It looks like the scene probably a couple of
25 days later when the snow had melted.

1 Q Okay. Does it look like a berm that was
2 actually --

3 A Exposed?

4 Q -- uncovered by the officers on scene the very
5 first day?

6 A Yes. Are we looking at "Q"?

7 Q No. At "P."

8 A "P"? Yes. It looks like the berm.

9 Q All right. And then with regard to "Q" for
10 identification, which again is the face sheet with the
11 identical information, is there a different photo?

12 A Yes.

13 Q What does that photo appear to depict, if you
14 know?

15 A It looks like the same area that Mr. O'Keefe
16 possibly found, I believe.

17 Q All right. Those two documents, "P" for
18 Identification and "Q" for Identification, those are
19 actually your report, correct?

20 A Correct. Can I explain?

21 Q Mr. Lally will, I'm sure, let you explain. At
22 this point, I'm going to be asking the questions, if
23 you don't mind.

24 A Okay.

25 MR. YANNETTI: Your Honor, I would offer into

1 evidence as full exhibits both "P" and "Q" for
2 identification, just the face sheet.

3 THE COURT: Is there an objection?

4 MR. LALLY: Yes, Your Honor.

5 THE COURT: The objection is sustained.

6 MR. YANNETTI: Can we approach?

7 THE COURT: Okay. Can I see those, please,
8 Sergeant?

9 THE WITNESS: Yes.

10 (Whereupon, there was a sidebar conference as
11 follows:)

12 MR. YANNETTI: I guess I'll hear the objection
13 first.

14 THE COURT: Go ahead with your objection.

15 MR. LALLY: I don't see how any of this is
16 relevant, number one. Number two, as far as the --
17 it was already testified as to what it is. I don't
18 understand why these need to be put in.

19 MR. YANNETTI: So this is going to be helpful
20 to the jury. What I'd like to do -- and, Your
21 Honor, with regard to police reports, Your Honor is
22 100 percent correct. Typically, you don't admit
23 somebody's police report with a narrative and all
24 of the hearsay that it contains. That's not what
25 I'm looking to do here. And, in fact, if the Court

1 only wanted to admit the top half of both of these
2 forms, that would be fine.

3 THE COURT: Also the "no crime involved."
4 There is a lot of hearsay. So what you want is the
5 pictures, Mr. Yannetti, right, that they're
6 separate pictures?

7 MR. YANNETTI: But I think it's far more
8 powerful if the jury sees that the information is
9 identical. And, in fact, we can redact the "no
10 crime involved." I don't need that. The other
11 stuff is just -- I'm not offering it for the truth
12 of the matter asserted. I am offering it to show
13 that it matches and what I think it doesn't match.
14 That's why it's relevant.

15 THE COURT: But he said he didn't know why
16 this had 10 --

17 MR. YANNETTI: No. He actually said he did.
18 That's the print date.

19 THE COURT: Well, you said, the print date,
20 and he said, I guess. All right. Printed by whom?
21 The police station or you guys?

22 MR. YANNETTI: No, not by us. This is a
23 police document.

24 THE COURT: So you just want these photos in
25 to show that they are different?

1 MR. YANNETTI: Yes. But I want to show that
2 they are part of the police report. They are part
3 of an identical police report. I mean, the fact
4 that there is, you know, the police logo, and it
5 all looks official.

6 THE COURT: All right. So I will let it in
7 but I'm not going to allow you to publish anything
8 on the screen because if this is indecipherable --

9 MR. YANNETTI: Well, we have ways of
10 magnifying it.

11 THE COURT: Exactly.

12 MR. YANNETTI: You can see it.

13 THE COURT: But maybe that's for a later time.
14 I will let you put in the top part after these are
15 -- but "no crime involved" because that would be
16 hearsay.

17 MR. YANNETTI: Right. Yes.

18 THE COURT: So I'll let you put in the top
19 third of each of these reports as is, and later we
20 can see if we can -- if we can expand upon them.

21 MR. YANNETTI: Let me ask you this: Can we
22 black out the "no crime involved" now with a Magic
23 Marker and can I just show that, what the Court has
24 in your hand right here, on a split screen?

25 THE COURT: No, because I haven't yet seen the

1 altered version of this. And, again, the jury gets
2 the evidence right here. The jury doesn't get -- I
3 don't know. Have you seen what this is?

4 MR. LALLY: Yes.

5 MR. YANNETTI: I believe you may have it on
6 your desk right now. But I gave the actual
7 exhibit.

8 MR. LALLY: I don't know.

9 MR. YANNETTI: I thought I saw it.

10 THE COURT: Do you have the actual exhibit?

11 Jurors, feel free to stand up and stretch.

12 While Ms. Little is getting that, we need to
13 still talk about Sergeant Lank and what exactly you
14 intend to put in so that I can rule on exactly what
15 I think.

16 MR. YANNETTI: Of course.

17 THE COURT: What you would be allowed to put
18 in.

19 MR. LALLY: Sure.

20 THE COURT: Thank you, Ms. Little. Okay. Is
21 this in evidence? I hate to say "this" without any
22 reference to it.

23 MR. LALLY: Not that.

24 THE COURT: Do you intend to put it into
25 evidence?

1 MR. LALLY: Yes.

2 THE COURT: So with that, if you intend to put
3 this still into evidence, Mr. Yannetti, if you
4 could -- and is this berm in evidence or --

5 MR. LALLY: It is.

6 THE COURT: -- is this a different one? All
7 right. So if you put that in first and then put
8 these in, then I'll let you put it on the screen.

9 MR. YANNETTI: Okay. Thank you.

10 THE COURT: Is there an objection to that,
11 Mr. Lally?

12 MR. LALLY: I do have --

13 THE COURT: To black out the --

14 MR. LALLY: As to the photographs, no
15 objection to that. As far as the report or any
16 part of the report, there is an objection to that.

17 THE COURT: All right. So as to the top --
18 what is your objection?

19 MR. LALLY: Again, I think it comes into a bit
20 of a dangerous territory in the sense that if
21 counsel is going to try to suggest there is some
22 sort of difference between the reports, then I
23 think we almost enter into a realm of the entire
24 report coming in.

25 THE COURT: I think he said he's going to

1 suggest that the reports are identical. The only
2 change is this.

3 MR. YANNETTI: Correct.

4 THE COURT: So let's make that clear. Okay?

5 MR. YANNETTI: Okay.

6 THE COURT: All right. So the report is put
7 on the screen. That has to be whited out and only
8 this part can be shown.

9 MR. YANNETTI: Thank you.

10 THE COURT: But you have to put that in first.

11 MR. YANNETTI: Okay.

12 THE COURT: Your objection is noted,
13 Mr. Lally. Ms. Little will give you that.

14 MR. YANNETTI: Mr. Lally? I'm sorry.

15 Just to make sure there are no mistakes, it's
16 been suggested to me, and I think it's probably a
17 good idea, to cut this exhibit.

18 THE COURT: Okay.

19 MR. YANNETTI: There is nothing else that's
20 shown for sure when it's put on the screen.

21 THE COURT: Wait. How are you putting it on
22 the screen? I thought we already had it?

23 MR. JACKSON: I was going to suggest that --
24 Mr. Bates has the entire report. Because it's
25 electronic, I don't want to take any chance to it

1 accidentally be put up. If we just cut it, we can
2 use it, use the ELM0. We've got an ELM0.

3 THE COURT: Okay.

4 MR. JACKSON: Is that okay?

5 THE COURT: Yes. So white it out and cut it.

6 MR. YANNETTI: And, just for the record, the
7 "P" and "Q" exhibit stickers are above the point
8 where we would cut it anyway.

9 THE COURT: Keep them on it, because then
10 that's when we will put the other, the exhibit
11 number.

12 MR. YANNETTI: Correct. Thank you.

13 THE COURT: All right.

14 (Whereupon, the sidebar conference concluded.)

15 THE COURT: Mr. Yannetti, do you have other
16 questions you could ask --

17 MR. YANNETTI: I do. I'm just getting the
18 exhibit that I need, Your Honor. I appreciate it.
19 All right. While I'm waiting for that, may I
20 approach?

21 THE COURT: Yes.

22 BY MR. YANNETTI:

23 Q I have placed a photo before you,
24 Sergeant Goode. Do you recognize what that depicts?

25 A Yes.

1 Q What does it depict?

2 A I believe that's a photo of a piece of a
3 taillight.

4 Q Okay. And, when you say "a photo of a piece
5 of a taillight," you're obviously referring to a piece
6 of a taillight allegedly found at 34 Fairview in
7 Canton?

8 A Yes.

9 Q Now, that photo is the photo that is included
10 in Exhibit "Q" for Identification that you previously
11 saw, right? That's the second photo; is it not?

12 A On the second face sheet that he gave me?

13 Q Yes.

14 A Yes.

15 Q All right. And I'm showing you --

16 MR. YANNETTI: if I may approach again?

17 THE COURT: Yes.

18 BY MR. YANNETTI:

19 Q -- what has already been marked Exhibit 20A.
20 Do you recognize that?

21 A Yes.

22 Q What do you recognize that to be?

23 A That's the berm from that morning.

24 Q Okay. And Exhibit 20A is the photo that was
25 in the first version of your report, which was "P" for

1 Identification, correct?

2 A Yes.

3 Q If I can take those back from you, sir?

4 A Yes.

5 MR. YANNETTI: Your Honor, may I publish the
6 two -- I'm sorry.

7 BY MR. YANNETTI

8 Q With regard to the first photo that you
9 identified which was the piece of taillight that
10 allegedly was found at 34 Fairview, that was a fair and
11 accurate representation of that photo, correct?

12 A Yes.

13 MR. YANNETTI: All right. May I offer that,
14 Your Honor?

15 THE COURT: There is no objection, Mr. Lally?

16 MR. LALLY: No, Your Honor.

17 THE COURT: Okay.

18 (Whereupon, photograph was entered and marked
19 Exhibit No. 42 in Evidence.)

20 THE COURT REPORTER: Exhibit 42.

21 MR. YANNETTI: I'm sorry. The exhibit number
22 was?

23 THE COURT REPORTER: Forty-two.

24 MR. YANNETTI: Forty-two. Thank you. May I
25 publish 20A and 42 separately for the jury, Your

1 Honor?

2 THE COURT: Okay.

3 BY MR. YANNETTI:

4 Q 20A is, you've testified, the photo of the
5 berm that was included in the first version of your
6 police report which was "P" for Identification,
7 correct?

8 A Yes.

9 MR. YANNETTI: Let's put up 42, please. I'm
10 sorry. Where is 42?

11 THE WITNESS: I don't have it.

12 MR. YANNETTI: Oh, you have it. No wonder.

13 Thank you, Mr. McDonough.

14 BY MR. YANNETTI:

15 Q Okay. The exhibit sticker is upside down, but
16 -- oh, there we go. That is the photo of the piece of
17 taillight allegedly found at 34 Fairview that you have
18 identified as Exhibit 42, correct?

19 A Yes.

20 Q Now, having seen those photos, one was
21 included in "P" for Identification and one was included
22 in "Q" for Identification, correct?

23 A Yes.

24 Q Which you previously identified as your report
25 or report, I should say?

1 A Yes.

2 Q All right.

3 MR. YANNETTI: Your Honor, I would offer the
4 top portion of "P" and "Q" for identification as a
5 full exhibit.

6 THE COURT: Okay. There is no objection from
7 the Commonwealth?

8 MR. LALLY: No.

9 THE COURT: It will come in. When the jury
10 actually gets it, we'll have it on the same 9x12
11 paper that everything else is. All exhibits go
12 through Madam Court Reporter.

13 THE COURT REPORTER: "P" becomes 43.

14 THE COURT: Jurors, I'm going to send you out
15 for five minutes. Okay?
16 (Whereupon, the jury is escorted from the courtroom
17 for a brief recess.)

18 THE COURT: May I see those, Madam Court
19 Reporter, please? Thank you.

20 All right. So I thought you were going to cut
21 them. Apparently, you probably don't have
22 scissors. Let's get these that they're acceptable
23 to go to the jury. I mean, this just came in with
24 a whole report on there.

25 MR. YANNETTI: I'm sorry?

1 THE COURT: This just came into evidence with
2 a whole report, and that's not what you agreed to
3 at sidebar.

4 MR. YANNETTI: Right. I guess we didn't have
5 scissors. Because it's folded, all I was going to
6 show to the jury is the part that --

7 THE COURT: But these are now in evidence.

8 MR. YANNETTI: I understand.

9 THE COURT: And that can't happen. So fix
10 them. Do we have scissors, Mr. Clerk?

11 THE COURT REPORTER: Right here, Your Honor.

12 THE COURT: So why don't you fix them. Run it
13 through a copy machine. All right. We'll take a
14 five-minute recess. Actually, this is probably a
15 good time for me to say, and it's not just the
16 defense, it's not just the prosecution, but we are
17 taking an awful lot of these jurors' times. We are
18 taking days and weeks. Let's not squander it by
19 repetitive evidence or taking time like this that
20 we shouldn't need to take. Okay? Let's move this
21 case along. All right?

22 (Whereupon, a brief recess is taken.)

23 (Court resumes.)

24 (Defendant present. Jury present.)

25 MR. YANNETTI: Your Honor, could I have "P"

1 and "Q" marked as the next exhibits in the trial?

2 THE COURT: Okay.

3 (Whereupon, top portion of "P" for Identification
4 is entered and marked Exhibit 43 in Evidence.)

5 (Whereupon, top portion of "Q" for Identification
6 is entered and marked Exhibit No. 44 in Evidence.)

7 THE COURT REPORTER: "P" will be 43. "Q" will
8 be 44.

9 MR. YANNETTI: And, with the Court's
10 permission, I'd like to display these one above the
11 other.

12 THE COURT: Okay.

13 BY MR. YANNETTI:

14 Q Sergeant Goode, you have previously testified
15 about the details in these reports. You would agree
16 that each of these reflects your report? It says (as
17 read), "Reporting Officer: Sergeant Sean Goode";
18 correct?

19 A Yes.

20 Q Each of these is page 1 of your report,
21 correct?

22 A Yes.

23 Q You've previously testified that you -- you
24 called that the face sheet of the report, correct?

25 A Yes.

1 Q Each of these has the identical incident
2 number and call number, correct?

3 A Yes.

4 Q The identical date and time reported, correct?

5 A Yes.

6 Q The identical report date and time, correct?

7 A Yes.

8 Q And, of course, the identical officer.

9 A Yes.

10 Q Other than the print date of the face sheet of
11 your report, one appears to be in January and one
12 appears to be in October, the major change is the photo
13 that's included on the face sheet, correct?

14 A Yes. Can I explain why?

15 Q So that second photo with the piece of
16 taillight that is included on the first page of your
17 report, that photo is not from January 29th of 2022,
18 correct?

19 A Correct.

20 Q You never took a photo of a piece of taillight
21 on January 29th of 2022, correct?

22 A Correct.

23 Q You never saw a piece of taillight at 34
24 Fairview on January 29th of 2022, correct?

25 A Correct.

1 Q Did you personally switch the photo on the
2 face sheet of your police report?

3 A No.

4 Q Do you know who did?

5 A So whoever updated the report, their
6 supplemental, you add photos.

7 Q In answer to my question, do you know the
8 specific person from your department who altered the
9 photo on the face sheet of your report?

10 A I didn't take the supplemental report. So I
11 don't know. I don't know who took the photo.

12 Q But, given that this is your report, you're
13 the reporting officer. You are responsible for the
14 content of that report, are you not?

15 A From my report, yes, not other officers'
16 supplementals to an investigation.

17 Q All right. But this is your report. This is
18 the face sheet per the reporting officer, Sergeant
19 Sean Goode; is it not?

20 A Yes, on the face sheet.

21 Q All right. Now, would you agree with me that
22 someone reading this report and seeing that the date
23 and time of the report is listed as January 29th of
24 2022 at 8:24 a.m., that's when you wrote it, correct?

25 A That's when I logged in, yes.

1 Q Somebody reading that and seeing a photo of a
2 piece of taillight might believe that that photo is
3 from the same date that you're writing a report,
4 correct?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 BY MR. LALLY:

8 Q Do you think it's misleading to include a
9 photo on the face sheet of the report when the report
10 is dated January 29th, 2022 and the photo is not from
11 that day, it's from sometime later?

12 MR. LALLY: Objection.

13 THE COURT: Sustained.

14 BY MR. YANNETTI:

15 Q Is there anything on what is now marked
16 Exhibit 44 on that face sheet that indicates the date
17 and time that that photo on Exhibit 44 was taken?

18 A No.

19 Q Is there anything on Exhibit 44, that face
20 sheet of your report, that indicates that it applies to
21 some supplemental report that was later filed?

22 A No.

23 MR. YANNETTI: If I may have a moment?

24 THE COURT: Yes.

25 MR. YANNETTI: Nothing further. Thank you.

1 THE COURT: All right. Please take the
2 exhibit down and we'll keep that exhibit,
3 Mr. Yannetti.

4 MR. YANNETTI: Oh, yes. Of course. We have
5 two others, as well.

6 THE COURT: The exhibits are to remain up
7 here.

8 MR. YANNETTI: With the clerk.

9 THE COURT: Yes.

10 MR. YANNETTI: All right.

11 THE COURT: All right. Are you ready now
12 Mr. Lally?

13 MR. LALLY: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. LALLY:

16 Q So, Sergeant Goode, turning back to some
17 questions you were asked yesterday in regard to
18 Christopher Albert and whether or not he was a town
19 selectman; is that correct?

20 A Yes.

21 Q Okay. And he is currently; is that correct?

22 A Yes.

23 Q And was he on January 29th of 2022?

24 A No.

25 Q So he was elected to the board of selectmen

1 subsequent to this date that you've been talking about
2 on January 29th, 2022, correct?

3 A Yes.

4 Q Now, the location where you were directed to
5 where Mr. O'Keefe had been located just after 6:00
6 a.m., where was that in relation to the property line
7 between 34 Fairview Road and the home next door?

8 A If I had to guess, probably 10-12 feet to the
9 property line.

10 Q Now, you were asked some questions about
11 having been to that residence at 34 Fairview Road
12 prior, and you indicated that you had been there years
13 ago with Sergeant Lank; is that correct?

14 A Yes.

15 Q And what was that in regard to, sir?

16 A It was a hit-and-run investigation.

17 Q And who, if anyone -- so why were you at that
18 residence at 34 Fairview Road?

19 A So there was a call for a motor vehicle crash
20 at the corner of Dedham and Washington Street, and the
21 suspect vehicle had fled the scene. Officer Lank was
22 my partner that day, that night. He followed the oil
23 spill of the vehicle down Dedham Street, up Cedarcrest,
24 all the way down to the intersection of Cedarcrest to
25 Fairview. And the oil spill actually drove into 34

1 Fairview, where we found the vehicle.

2 Q And who, if anyone, did you -- through your
3 investigation, who, if anyone, did you associate with
4 operating that vehicle?

5 A That would be Tim Albert.

6 Q And was Mr. Timothy Albert, was he charged in
7 reference to that incident?

8 A Yes, he was.

9 Q And do you know approximately when that was?

10 A It was in 2009. I don't know the exact date
11 but I know the year.

12 Q Now, as far as your report, you were asked a
13 number of questions about that. I'm sorry. Before I
14 get to that, you had testified earlier that when you
15 were leaving the scene, there was an amount of snow
16 that had piled on your windshield, correct?

17 A Yes.

18 Q Okay. And, after leaving the scene, what, if
19 anything, happened with the snowfall sort of throughout
20 the course of the day, if you know?

21 A Our windshield was completely covered. We had
22 to take time to clear off the windshields. It had
23 snowed considerably.

24 Q And then following that sort of throughout the
25 course of the rest of the day and the afternoon, what,

1 if anything, did you observe about the snowfall at that
2 point?

3 A It continually got worse.

4 Q Now, as far as your report is concerned, what
5 you were shown and what you have seen, has there been
6 any change as far as your narrative in reference to who
7 you talked to, what they said, anything of that effect?

8 A No.

9 Q Now, you've been asked a bunch of questions
10 about what you called a face sheet. Can you explain to
11 the jury sort of what a face sheet is and sort of how
12 that comes into being?

13 A The easiest way, it's the top sheet of the
14 report. It's not the actual meat of the report. It
15 just gives you the date and time. Usually if you can
16 fit on the front of the sheet, the first party would be
17 involved, if there was a suspect, defendant and that's
18 it. It would be their name, date of birth, social
19 security number, all of their personal information.

20 Q So as far as, as you were saying, sort of the
21 meat of the report, it has no real relation to that,
22 correct?

23 A Correct.

24 Q Now, you were handed two exhibits or two parts
25 of a report and you were told to ignore the date that

1 they were printed, correct?

2 A Correct.

3 Q And so what, if any, significance would the
4 date that they were printed have in relation to what's
5 on a face sheet?

6 A So in this case, there was supplemental
7 reports done after the 29th. So those reports were
8 added to my initial report. You can add a supplemental
9 narrative. So if that includes meeting new people,
10 talking to other people or taking photos of anything
11 you found, you would add that to our report, and it
12 would be documented in a supplemental.

13 Q And you had offered, I believe, a couple times
14 to explain to the jury sort of why a photo might be
15 different from one face sheet when it's printed versus
16 a subsequent date when the face sheet is printed.

17 Can you explain to the jury at this time sort
18 of why would that be different?

19 A So when that face sheet was printed, if Photo
20 No. 1 was the top photo and now there is a new photo
21 added, that could be now the top photo on that face
22 sheet when it was printed.

23 Q And how would that -- would that be something
24 that someone would physically go in and do, or is that
25 something that sort of within the system automatically

1 occurs, if you know?

2 A I don't know how the system numbers the
3 photos. So we added our photos on January 29th. And
4 then any photos subsequent to that were added. I don't
5 know the software would put them, one through 20 or how
6 many there were.

7 MR. LALLY: Nothing further, Your Honor.

8 THE COURT: Thank you.

9 MR. YANNETTI: If I might, Your Honor.

10 THE COURT: Very briefly.

11 RECROSS-EXAMINATION

12 BY MR. YANNETTI:

13 Q You had just talked about how Tim Albert was
14 charged as you go through the investigation many years
15 ago, correct?

16 A Yes.

17 Q The evidence in that case, you would agree
18 with me, was strong against Tim Albert for that crime,
19 was it not?

20 A For leaving the scene, yes.

21 Q Sure. Sergeant Lank was actually able to
22 follow the trail of fluid from the accident scene right
23 to 34 Fairview, correct?

24 A Yes.

25 Q And Tim Albert admitted that he got nervous

1 and left the scene, correct?

2 A Correct.

3 Q All right. Now, despite the fact that he was
4 charged, are you aware that the case was just flat-out
5 dismissed upon restitution in court?

6 MR. LALLY: Objection. Move to strike, Your
7 Honor.

8 THE COURT: The objection is sustained.

9 MR. YANNETTI: Nothing further.

10 THE COURT: Jurors, you are to disregard that.
11 All right. You're all set, sir.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness is excused.)

14 THE COURT: Who is your next witness,
15 Mr. Lally?

16 MR. LALLY: Yes, Your Honor. The Commonwealth
17 calls Sergeant Michael Lank to the stand.

18 THE COURT: All right. Not yet. I'll see
19 counsel at sidebar.

20 (Whereupon, there was a sidebar conference as
21 follows:)

22 THE COURT: So we still need to deal with
23 this. I assumed you'd want to know before you did
24 your direct.

25 MR. LALLY: Yes.

1 THE COURT: You were saying before you had the
2 other officer available yesterday to go. Can you
3 call him or do I have to give this jury another
4 break? And, Mr. Yannetti --

5 MR. YANNETTI: Yes, Your Honor?

6 THE COURT: -- I expect better from you than
7 that.

8 MR. YANNETTI: I think that is admissible,
9 Your Honor.

10 THE COURT: I know you might, but it's not.

11 MR. YANNETTI: Okay.

12 THE COURT: Especially we haven't had this
13 conversation yet today about what I was admitting
14 regarding that incident. So I'm just telling you
15 that.

16 Do you want to call the other witness or do
17 you want me to give the jury another break?

18 MR. LALLY: Yes. I'm sorry.

19 MS. MC LAUGHLIN: You Honor, I'd just ask if I
20 could step out to see if he's here?

21 THE COURT: Okay.

22 MS. MC LAUGHLIN: I could step out of the
23 courtroom and --

24 THE COURT: Sure.

25 (Whereupon, Ms. McLaughlin steps from the sidebar

1 and exits the courtroom.)

2 THE COURT: Mr. Jackson, do you want to tell
3 me exactly -- do you want to do this now here while
4 the jury is waiting?

5 MR. JACKSON: Sure.

6 THE COURT: Let me just grab my -- I'm going
7 to send the jurors out for five minutes.

8 MR. JACKSON: All right.

9 (Whereupon, the sidebar conference concluded.)

10 THE COURT: Jurors, I'm sorry to do this to
11 you. We are going to send you back out for about
12 -- why don't we take the morning break. Okay? So
13 15 minutes.

14 (Whereupon, the jury is escorted from the courtroom
15 for a brief recess.)

16 THE COURT: So I figure we should do this in
17 open court. I know it's important to the
18 defendant's case. So tell me exactly, based on the
19 voir dire yesterday, exactly what you hope to get
20 into?

21 MR. JACKSON: Thank you, Your Honor. With
22 regard to the voir dire yesterday, my intention is
23 to closely mirror my questioning of Sergeant Lank
24 with my questioning of him on voir dire; in other
25 words, the fact of the fight, the fact of

1 Chris Albert's involvement in the fight, the fact
2 of his getting involved in the fight, called
3 officers to assist him, the specifics of the
4 allegations of the Lopilato brothers as to his
5 conduct, what they alleged he did, the part that he
6 took in the fight, their subsequent release from
7 the scene, going back into the Canton Police
8 Department to file or lodge a complaint, the fact
9 that they were turned away for the complaint.
10 There were subsequent police reports filed, and --

11 THE COURT: I don't have those, right? You
12 didn't send them to me.

13 MR. JACKSON: We got those. We got those
14 last night.

15 THE COURT: Okay. It's too late for the
16 police reports, but go ahead and finish what you
17 have to say.

18 MR. JACKSON: Right. Just so the Court knows,
19 as the Court requested, we provided those to the
20 judicial assistant last night.

21 THE COURT: Who is the judicial assistant?

22 MR. JACKSON: Ken.

23 THE CLERK: Is Lopilato's?

24 MR. JACKSON: Lopilato's, yes.

25 THE COURT: Go ahead from that, after the

1 police report.

2 MR. JACKSON: So basically, Your Honor, the --
3 and I don't have any interest in introducing the
4 police report. I just need the timing. In other
5 words, there was the fight, the complaint. The
6 police reports were filed after the complaint. And
7 then they were charged after the police reports.
8 And then the subsequent resolution of the matter.

9 THE COURT: So what do you mean by subsequent
10 resolution?

11 MR. JACKSON: They were adjudicated not
12 guilty. And, ultimately, the subsequent witness
13 intimidation request by Sergeant Lank was thrown
14 out by the D.A.

15 With regard to what was brought up by
16 Mr. Lally yesterday, I intend to include and list
17 it in my questioning of Sergeant Lank the issue
18 concerning Tim Albert and the resolution of that
19 issue --

20 THE COURT: Well, Mr. Yannetti just did that.

21 MR. JACKSON: Well, he didn't because the
22 Court struck it.

23 THE COURT: It should not have been done.

24 MR. JACKSON: Well, Your Honor --

25 THE COURT: Go ahead.

1 MR. JACKSON: -- respectfully, the
2 Commonwealth left the jurors with a misimpression
3 intentionally. His last question was "and he was
4 charged." That's true. He was charged. And then
5 those charges were dismissed subsequent thereto.

6 THE COURT: But this was -- it wasn't objected
7 to, right? Mr. Lally's question wasn't objected
8 to.

9 All right. So is that the end of what you
10 intend to get into?

11 MR. JACKSON: Yes.

12 THE COURT: All right. Mr. Lally, do you want
13 to -- you're objecting to all of this?

14 MR. LALLY: Yes, Your Honor.

15 THE COURT: Okay. Do you want to be heard
16 specifically on anything?

17 MR. LALLY: No, Your Honor.

18 THE COURT: All right. So what I'm going to
19 allow you to get in is the relationship of
20 Sergeant Lank with the Alberts. But keep in mind,
21 Mr. Jackson, the Alberts are not all one entity.

22 MR. JACKSON: Understood.

23 THE COURT: So you must do it individually.
24 And simply because the witness had a relationship
25 with Chris Albert doesn't mean that it has any

1 bearing on favoritism or bias to Brian Albert or to
2 Tim Albert. So you have to do them individually.

3 I'll give you some leeway on the incident,
4 itself. But keep in mind the particulars of the
5 fight isn't really what matters here. It's the
6 fact of the fight and the intervening of Sergeant
7 Lank on behalf of Chris Albert as it's relevant to
8 bias or favoritism.

9 So if there are objections that you get
10 beyond, you may be stopped. You can get when and
11 where it happened, that it happened outside a bar
12 where the witness had been drinking. He did not
13 acknowledge your drinking buddy's comments. So
14 you're not to specifically say that where you just
15 said you're going to outline what you did yesterday
16 and that this occurred in Canton, the role, if any,
17 he had and handcuffing or having the Lopilatos put
18 in custody and the fact that Mark Lopilato went to
19 the Canton Police Department to file a report.

20 What you cannot get into is the Mobil gas
21 station incident, because I didn't hear anything
22 yesterday that the conduct of Sergeant Lank had
23 anything to do with the Alberts. I'm not convinced
24 that it wasn't merely self-interest on his part.
25 So that's out. That was 22 years ago.

1 So you're not getting into the federal
2 investigation, that he was sued. I'm not letting
3 you get into the not guilty because it's
4 speculative. Who knows why he was found not
5 guilty, why they were found not guilty. You cannot
6 get into that. There are all kinds of reasons
7 people can be found not guilty. Whether I allow
8 more depends on the testimony, the direct and the
9 cross. So you are to go no further than that
10 without leave of the Court.

11 So the Commonwealth can then get into the
12 animosity between the witness, Sergeant Lank, and
13 Brian Albert because of the arrest of Tim Albert.
14 But, Mr. Lally, if you open the door to something
15 further, I need to be seen at sidebar before
16 anybody can come get into that.

17 So, Mr. Jackson, you did this in 10 minutes
18 yesterday. I don't expect you to take two hours to
19 do this. Okay? And, just as an aside again, let's
20 not waste the jury's time with repetitive
21 testimony.

22 MR. JACKSON: I don't intend to, Your Honor.
23 I think I understand the Court's -- the parameters.
24 The one thing I didn't hear the Court say but I
25 think it was implied, but I want to make sure I'm

1 clear, I can get into the fact that there was a
2 complaint sought and then there were subsequent
3 police reports filed and then the subsequent
4 citation or summons.

5 THE COURT: I didn't hear anything yesterday
6 about -- well, the police reports. I haven't seen
7 them, so that the complaint was sought and that
8 subsequent to that, they were summonsed and had to
9 go to court.

10 MR. JACKSON: And the dates of the police
11 reports that were filed?

12 THE COURT: You can say the dates without
13 saying the police reports. So they went into the
14 station to file a complaint. They were told they
15 couldn't file a complaint on those two days, right?

16 MR. JACKSON: Correct.

17 THE COURT: And then the -- so the witness did
18 testify that he filed a report but it was after he
19 had told his sergeant the night before of this
20 incident, and the sergeant said, you don't have to
21 file a report until you come back, or something
22 like that.

23 MR. JACKSON: So I'll just ask were the
24 reports dated after the initial complaint was
25 requested. I can leave it at that.

1 THE COURT: Okay.

2 MR. JACKSON: Okay.

3 THE COURT: I'll give you all a five-minute
4 break, and then we have to get going.

5 (Whereupon, there was a brief recess taken.)

6 (Court resumes at 10:36 p.m.)

7 (Defendant present. Jury present.)

8 THE COURT: Mr. Jackson, you'll just alert me
9 before you begin that line of questioning, because
10 I have an instruction.

11 MR. JACKSON: Of course.

12 THE COURT: All right. Mr. Lally, your next
13 witness, please.

14 MR. LALLY: Yes, Your Honor. The Commonwealth
15 calls Sergeant Michael Lank to the stand.

16 Whereupon,

17 MICHAEL LANK

18 having been first duly sworn, was examined and
19 testified as follows:

20 THE COURT: All right. Mr. Lally, whenever
21 you're ready.

22 MR. LALLY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. LALLY:

25 Q Good morning, sir.

1 A Good morning.

2 Q Could you please state your name and spell
3 your last name for the jury?

4 A Michael Lank, L-A-N-K.

5 Q And how are you employed, sir?

6 A I'm a lieutenant with the Canton Police.

7 Q And how long in total have you been a member
8 of the Canton Police?

9 A Over 24 years.

10 Q And how long have you held the rank of
11 lieutenant with the Canton Police?

12 A It will be two years in August.

13 Q Now, prior to -- well, let me ask you first,
14 with reference to your responsibilities as a
15 lieutenant, if you could explain to the jury just in
16 general terms what are your duties and responsibilities
17 as a lieutenant?

18 A I oversee the gun licensing and patrol.

19 Q And, prior to working as a lieutenant, what
20 was your role with the Canton Police before that?

21 A I was a detective sergeant.

22 Q And how long were you a detective sergeant?

23 A From September of '21 until August of '22.

24 Q And, during that time frame as a detective
25 sergeant, what were your duties and responsibilities

1 with regard to the Canton Police at that point?

2 A To oversee the detective bureau, ensure that
3 all reports were issued to respective detectives and
4 completed.

5 Q Now, you're also familiar with the role within
6 the Canton Police of a sort of shift sergeant; is that
7 correct?

8 A Yes.

9 Q And if you could explain to the jury sort of
10 what are the differences between what a shift sergeant
11 does and what a detective sergeant does.

12 A A shift sergeant's primary responsibility is
13 to run the daily shift, give out sectors to each of the
14 cars and dispatch cruisers to appropriate areas and so
15 forth.

16 Q If I could turn your attention to the morning
17 of January 29th, 2022, at some point after 6:00 a.m.,
18 did you receive a call in regard to a dispatch that
19 your department had received?

20 A Yes.

21 Q And who, if anyone, called you around that
22 time?

23 A Sergeant Sean Goode.

24 Q Do you know approximately what time
25 Sergeant Goode called you?

1 A I believe it was 6:08.

2 Q And, with reference to that call, the initial
3 call from Sergeant Goode, what, if any, information did
4 he relay to you at that time?

5 A Sergeant Goode stated that there was a
6 gentleman found in the snow at 34 Fairview Road and he
7 was in very grave condition. And he brought it to my
8 attention that he was also a Boston police officer.

9 Q And, subsequent to that through the course of
10 your investigative work on this case, did you learn who
11 that unresponsive male was?

12 A Yes.

13 Q And who did you learn him to be?

14 A John O'Keefe.

15 Q Upon receiving that call, where did you go?

16 A I went to 34 Fairview Road.

17 Q And, if you know, about what time would you
18 estimate that you arrived in the area of 34 Fairview
19 Road?

20 A I live fairly close. So I was on scene by I
21 believe it was 6:24 or 6:25.

22 Q And, upon your arrival, who, if anyone else,
23 from your department was there prior to?

24 A Officer Saraf, Officer Mullaney and
25 Sergeant Goode.

1 Q And, when you arrived beyond sort of the other
2 officers from your department, what, if any, other
3 activity or what, if any, other persons did you observe
4 on scene?

5 A When I arrived, I observed that the ambulance
6 was still there. There was multiple EMTs, and I
7 observed some witnesses, also.

8 Q And, with respect to the ambulance, it's your
9 understanding Mr. O'Keefe was in that ambulance?

10 A Yes.

11 Q And did you ever see Mr. O'Keefe on that
12 morning?

13 A I did not.

14 Q And, at some point, the other officers who
15 preceded your arrival, did they direct your attention
16 to where Mr. O'Keefe was found when they first arrived?

17 A They did.

18 Q And where was that sort of in relation to the
19 property, if you recall?

20 A If you're looking at 34 Fairview Road, it was
21 on the left side of the property, about eight feet from
22 the road.

23 Q And, in that sort of general area, what, if
24 any, sort of landmarks or other sort of items in that
25 area of the front yard did you observe?

1 A I observed a flagpole. There was a fire
2 hydrant and some brush area over there.

3 Q And, upon your arrival on scene, who was the
4 first person that you spoke to?

5 A Sergeant Sean Goode.

6 Q And you had some conversation with him; is
7 that correct?

8 A That's correct.

9 Q And then following talking to Sergeant Goode,
10 who, if anyone else, did you speak to on the scene?

11 A I spoke to Jennifer McCabe.

12 Q And where was it in relation to the scene that
13 you first spoke to Jennifer McCabe?

14 A I believe I spoke to Jennifer McCabe right in
15 front of marked Cruiser 683, which was assigned to
16 Officer Saraf.

17 Q And then about how long a conversation was
18 that initially with Ms. McCabe?

19 A I would say probably eight or nine minutes.

20 Q And, in addition to Ms. McCabe, what, if any,
21 other sort of civilians did you observe in that area
22 around that time?

23 A I observed Kerry Roberts. And I don't recall
24 seeing anybody else at the scene while I was focused on
25 Ms. McCabe.

1 Q Now, with respect to Jennifer McCabe -- strike
2 that.

3 So after you spoke with Ms. McCabe for eight
4 or nine minutes, then who, if anyone else, did you
5 speak to at that time?

6 A So after I spoke with Ms. McCabe, I believe I
7 was able to then contact the CPAC unit.

8 Q And what is the CPAC unit?

9 A The CPAC unit is the investigative division
10 for the Norfolk County District Attorney's Office.

11 Q And why did you contact them?

12 A Because I was made aware at some point that it
13 did not appear that Mr. O'Keefe was going to survive,
14 and I wanted them to be aware of the situation.

15 Q And did they respond at that time?

16 A No.

17 Q Now, with reference to -- is that sort of a
18 typical protocol or what, if any, sort of typical
19 procedure would you have responding to a scene of this
20 nature?

21 A Yes. Any sort of scene where it appears that
22 the person is not going to survive, we would contact
23 state police CPAC unit.

24 Q And why is that, sir?

25 A Because they investigate all deaths.

1 Q So they have jurisdiction over all unattended
2 deaths; is that correct?

3 A That's correct.

4 Q As well as homicides and things of that
5 nature?

6 A Correct.

7 Q Now, once you -- do you recall who, if anyone,
8 you spoke to on that first call or notation to CPAC?

9 A It would have been just the dispatch center on
10 the first call.

11 Q And what, if any, subsequent calls did you
12 have with regard to CPAC while you were on scene that
13 morning?

14 A I got a return call from Trooper Michael
15 Proctor.

16 Q And, from your conversation with Trooper
17 Proctor, what was your understanding as far as their
18 response to the scene at that time?

19 A So at that point in time, Trooper Proctor
20 informed me that they would not be responding.

21 Q I'm sorry. I don't know what that noise is,
22 but if I could just ask you to repeat your last
23 response because, frankly, I didn't get it.

24 A In speaking to Trooper Proctor, he advised me
25 at that point that they would not be responding.

1 Q And did he inform you as to why not at that
2 time?

3 MR. JACKSON: Objection.

4 THE COURT: Sustained.

5 BY MR. LALLY:

6 Q Now, when you arrived on scene, what, if
7 anything, did you note as far as the weather
8 conditions?

9 A The weather conditions were extremely poor.
10 There were high winds, heavy snow and freezing
11 temperatures.

12 Q Now, you mentioned when you first arrived on
13 scene, Mr. O'Keefe is in the back of that ambulance; is
14 that correct?

15 A That's correct.

16 Q And when was it that the ambulance left in
17 relation to when you arrived?

18 A Very shortly after I arrived. I would say
19 within five minutes.

20 Q Now, as far as injuries to Mr. O'Keefe, who,
21 if anyone, relayed any information in regard to that?

22 A Sergeant Goode advised me that --

23 MR. JACKSON: Objection.

24 THE COURT: Sustained.

25 BY MR. LALLY:

1 Q Now, as far as following your conversation
2 with Ms. McCabe, what was sort of the next steps that
3 you took on scene?

4 A After I spoke to Ms. McCabe, I advised her
5 that we were going to need to speak with the
6 homeowners. She said that they were probably sleeping.
7 I advised her that we were going to need to speak with
8 them. And that's when I placed the call to the CPAC
9 unit.

10 Q And, prior to that when you were on scene, had
11 you seen anyone come in or go out at the residence at
12 34 Fairview Road?

13 A No.

14 Q And, as far as sort of the other houses on the
15 street, what, if any, activity did you observe with
16 reference to any residents of those homes going in and
17 coming out of their home?

18 A I did not observe anybody come in or out of
19 their home.

20 Q Now, following your initial call to CPAC in
21 conversation with Trooper Proctor, what is it that you
22 did next?

23 A Once that call was complete, Sergeant Goode
24 and I observed that there was now a light on in the
25 house of 34 Fairview, and we made the decision to then

1 go in and speak with the homeowners.

2 Q And how was it that you sort of proceeded up
3 to the home?

4 A I believe -- I don't recall if we used -- I
5 believe we used the driveway, but I'm not 100 percent
6 sure.

7 Q And, when you came into the home, do you
8 recall which door you used to enter the home?

9 A The main door. The front door.

10 Q And, when you entered in through the main
11 door, what -- if you could, describe to the jury sort
12 of what you observed as far as what was before you from
13 the layout perspective?

14 A There was a staircase right in front of us and
15 to the right it entered into like what appeared to be
16 like a dining area. And who, if anyone, did you speak
17 with inside the home that morning?

18 A Brian Albert and Nicole Albert.

19 Q And what, if any, relationship to the home did
20 you determine based on your conversation with them?

21 A They were the homeowners.

22 Q Now, Brian Albert. Is that someone you knew
23 prior to January 29th of 2022?

24 A Yes.

25 Q And how did you know him?

1 A I knew him as the oldest of the Albert
2 brothers.

3 Q And did you know some of the other Albert
4 brothers?

5 A Yes.

6 Q Let me ask you this, Sergeant. Where did you
7 grow up?

8 A Canton.

9 Q And how long have you lived in Canton?

10 A We moved here -- excuse me. We moved to
11 Canton when I was five years old.

12 Q So essentially since you were five years old,
13 you lived in the town, correct?

14 A Yes.

15 Q You work in the town, correct?

16 A Yes.

17 Q Do you have children?

18 A I do.

19 Q Any of them play sports?

20 A They do.

21 MR. JACKSON: Objection.

22 THE COURT: Sustained.

23 MR. JACKSON: Move to strike.

24 THE COURT: I'll strike that.

25 BY MR. LALLY:

1 Q What, if any, other sort of -- other than
2 living and working in the town, what, if anything, else
3 is it that you do around the town of Canton?

4 A I coach youth sports.

5 Q And have you done -- how long have you done
6 that for?

7 A I would say at least nine or 10 years.

8 Q And how would you describe your relationship
9 with Brian Alford prior to that January 29th, 2022?

10 A Civil.

11 Q Are you friends? Do you socialize?

12 A No.

13 Q Now, in addition to Brian Albert and Nicole
14 Albert, who, if anyone, else -- where did you speak to
15 them within the home?

16 A Just inside the door by the staircase.

17 Q And how would you describe their demeanor when
18 you were speaking to them?

19 A They appeared, especially Mr. Albert appeared,
20 disheveled. It looked like he had just woken up.

21 Q And about how long a conversation was it
22 between Brian Albert and Nicole Albert that initial
23 time?

24 A I'd say 15, 20 minutes.

25 Q And, beyond that, who, if anyone, else did you

1 see within the home besides yourself, Sergeant Goode
2 and Mr. and Mrs. Albert?

3 A Jennifer McCabe.

4 Q No one else at that time?

5 A No.

6 Q Are you familiar with a gentleman named
7 Brian Higgins?

8 A I am.

9 Q And how are you familiar with him?

10 A I met Brian when he was stationed at our
11 police station. I don't know how many years ago it
12 was, but he was assigned to our building years ago.
13 That's how I met him.

14 Q And assigned in what capacity? What I mean by
15 that is what did he do for work?

16 A Brian is an ATF agent.

17 Q And did you see Mr. Higgins at any point in
18 time during the time that you were at Fairview Road
19 that morning?

20 A Not on my initial response.

21 Q So sometime after; is that correct?

22 A Yes.

23 Q Okay. And when about was that?

24 A That would have been shortly after 9:00 a.m.

25 Q We will get to that in a moment. But, after

1 your conversation with Brian Albert and Nicole Albert
2 inside the house, what is it that you did then?

3 A Could you repeat that, please?

4 Q Sure. After talking to the homeowners, what
5 was your next step on scene that day? What did you do
6 next?

7 A After speaking with the family, by that point,
8 Lieutenant Gallagher was on scene and spoke with
9 Lieutenant Gallagher as to what we were going to do
10 next as far as the scene, itself.

11 Q And, to that end, what, if anything, did you
12 or the other officers do with regard to sort of
13 security of the scene at that time?

14 A So we had put up some crime scene tape to try
15 to protect the scene, but it was a futile effort
16 because of the wind. But there were marked patrol cars
17 in front of the yard at all times. So the scene was
18 fairly secure at all times.

19 Q And then with relation to the scene or the
20 area that you were directed or your attention was
21 directed to as to where Mr. O'Keefe had been found,
22 what, if anything, did you do with reference to that
23 area?

24 A I stood by and observed while Lieutenant
25 Gallagher used a leaf blower to try to clear the top

1 layers of snow off the scene.

2 Q And, at some point in time -- well, that
3 particular process, was that memorialized in any way?

4 A Yes.

5 Q Okay. And how was it done so?

6 A In my report.

7 Q I'm sorry. Beyond that. Were there any sort
8 of photos or video that were taken of that leaf blower
9 process?

10 A Yes. Sergeant Goode was able to take video
11 while Lieutenant Gallagher used the leaf blower.

12 Q And you've seen that video; is that correct?

13 A Yes.

14 Q And what's contained in that video, is that a
15 fair and accurate betrayal of sort of what happened on
16 scene that morning?

17 A Yes.

18 Q Now, in addition to -- well, let me ask you
19 this: As far as the leaf blower was concerned, what
20 was sort of the purpose of that or what was the
21 thinking behind that?

22 A The purpose behind the leaf blower was just to
23 take the top layers of the snow off to reveal what was
24 underneath and try to preserve any potential evidence.

25 Q And, upon employing that, what, if anything,

1 did you then observe in that area of the front lawn?

2 A Ultimately, we were able to see what appeared
3 to be blood drops in the snow as well as a drinking
4 glass, cocktail glass.

5 Q Now, in addition to the video that was taken
6 with regard to the leaf-blowing process or the use of
7 the leaf blower, were there photos that were taken of
8 the scene, as well?

9 A Yes, sir.

10 MR. LALLY: Ms. Gilman, if I could have
11 Exhibit No. 27?

12 BY MR. LALLY:

13 Q Sergeant Lank, what's up on the screen that's
14 been previously marked as Exhibit 27, do you recognize
15 that?

16 A Yes.

17 Q And what do you recognize it to be, sir?

18 A I recognize that to be the scene that we were
19 working with the leaf blower.

20 MR. LALLY: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes.

23 BY MR. LALLY:

24 Q I am handing you a laser pointer. Basically,
25 it's very simple. Just press on that button and point

1 in the direction.

2 A Okay. Thank you.

3 Q Thank you, sir.

4 So, Lieutenant Lank, using that laser pointer,
5 if you could draw the jury's attention, what, if
6 anything of significance, you observe in this
7 photograph in relation to what you saw on the scene
8 that day?

9 A So it's fair to see blood drops here in the
10 snow that had been revealed by wiping away the top
11 layer as well as the glass protruding from the snow.

12 Q Thank you, sir.

13 MR. LALLY: Ms. Gilman, you can take that
14 down.

15 BY MR. LALLY:

16 Q Now, at any point in time when you were on
17 scene, did you have any contact or interaction with a
18 person named Karen Read?

19 A I did not.

20 Q Did you see her on scene at all that day?

21 A I don't recall seeing her. I believe she was
22 there while I was there, but I never spoke to her.

23 Q Now, following your initial conversation
24 inside the home of 34 Fairview with Brian Albert,
25 Nicole Albert and speaking to Jennifer McCabe outside,

1 who, if anyone, else did you speak with that arrived on
2 scene that morning?

3 A Matthew McCabe.

4 Q And when was it that Matthew McCabe arrived in
5 relation to sort of your arrival and when you spoke to
6 the other people?

7 A Matthew McCabe arrived just a couple of
8 minutes after I had walked out of the house the first
9 time.

10 Q And so when he arrived, where did you go?

11 A Moments after he arrived, I went back into the
12 house to speak with Mr. McCabe.

13 Q And about how long a conversation was it that
14 you were in the house when you were speaking to
15 Mr. McCabe?

16 A I'm not sure. I'd say maybe five minutes.

17 Q And over the course of that morning, about how
18 many times did you go into the residence at 34 Fairview
19 Road?

20 A Three.

21 Q Anyone ever tell you that you couldn't go into
22 the home or that stopped you at the doorway or anything
23 like that?

24 A No.

25 Q And, with reference to inside of the home,

1 what, if any, observations did you make of sort of how
2 the home was situated, anything disheveled or anything
3 like that?

4 A Everything appeared in order.

5 Q And just if you know, what, if any,
6 relationship does Matthew McCabe have to Jennifer
7 McCabe?

8 A Matthew McCabe is Jennifer McCabe's husband.

9 Q Now, turning back to what was just up on the
10 screen in Exhibit 27, with regard to that, those items
11 that you observed in the yards, in the front lawn, that
12 day, what, if anything, did you or the other officers
13 do with respect to those items?

14 A The drinking glass was secured into an
15 evidence bag and the blood drops were secured into six
16 Solo cups.

17 Q And why were they secured into six Solo cups?

18 A We did the best that we could with the
19 situation with the weather and deteriorating situation.
20 Lieutenant Gallagher was able to obtain the Solo cups
21 from Lieutenant Kelleher's house, which was diagonally
22 across the street.

23 Q Now, with respect to the CPAC unit or the
24 phone call that you made to the state police, beyond
25 sort of the jurisdiction of them having over unattended

1 deaths and things of that nature, what, if any, other
2 assets does the state police have at their disposal
3 with regard to crime scene that your department does
4 not?

5 A They have crime scene units that process crime
6 scenes.

7 Q Now, with respect to those items once they
8 were secured, just in reference to the Solo cups,
9 beyond sort of just putting them into Solo cups, what,
10 if anything, else did you or the other officers do to
11 secure those items specifically?

12 A They were secured into a brown evidence bag.

13 Q And, following them being secured, where did
14 they go from there?

15 A They were then placed into my truck at that
16 point, my police truck that I was using that day, and
17 ultimately transported back to the police station.

18 Q And transported back to the police station by
19 whom?

20 A By me.

21 Q And, once you were back at the police station
22 with those items, what, if anything, did you do with
23 them at that time?

24 A They were secured at the temporary evidence in
25 the refrigerated unit for the Solo cups. And the glass

1 was secured into temporary evidence.

2 Q And so when you say "temporary evidence," why
3 were they secured into temporary evidence?

4 A They were secured into temporary evidence so
5 that they could ultimately be turned over to the state
6 police.

7 Q And, as far as when you secure something into
8 temporary evidence, just in general terms, what is it
9 that you do with that item to secure it or label it or
10 anything else?

11 A So it's assigned a property number, and we
12 would print out a property label. And then it's
13 assigned the OF number, which is the report.

14 Q So "OF" stands for offense; is that correct?

15 A Offense. Yes.

16 Q And so each report that you generate has a
17 specific number with an "OF" following it?

18 A That's correct.

19 Q And then that number is associated with the
20 evidence if you secure it, correct?

21 A Yes.

22 Q Now, with reference to that evidence, whether
23 it's temporary evidence or otherwise, what, if any,
24 restrictions are there with regard to access to those
25 items within your department?

1 A So temporary evidence is accessible to all
2 officers.

3 Q But to officers from your department, correct?

4 A From our department, yes.

5 Q And following that, are you aware or what, if
6 anything, are you aware of of what happened with those
7 items after you secured them into temporary evidence?

8 A I believe they were ultimately turned over to
9 the state police.

10 MR. LALLY: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 BY MR. LALLY:

14 Q I'm handing you up a box. Do you recognize
15 that?

16 A Yes.

17 Q And what do you recognize that to be?

18 A It appears to be a box to secure evidence with
19 a call number on it.

20 Q And is that a box that you've seen earlier
21 today?

22 A Yes.

23 Q Okay. And, with reference to what's contained
24 within the box, have you seen that this morning, as
25 well?

1 A Yes.

2 MR. LALLY: Your Honor, with the Court's
3 permission, I would ask that the witness be allowed
4 to take what's in the box out of the box.

5 THE COURT: Okay.

6 BY MR. LALLY:

7 Q Sir, just for the record, you have some
8 evidence gloves with you in court today; is that
9 correct?

10 A That's correct.

11 Q I'm sorry, sir. Before you just go into that,
12 just with reference to the bag that you have before
13 you, what, if any, markings are on that that relate to
14 sort of your case, your case number with the Canton
15 Police?

16 A So it is -- there is a case number assigned to
17 us, 22-870F. And there is a property number, 22-18PR.
18 And it's listed as broken drinking glass.

19 Q And have you seen the item contained within
20 that bag earlier this morning, as well?

21 A Yes.

22 Q And what you observe within that bag, is that
23 the piece of the cocktail glass that you observed on
24 the front yard area of 34 Fairview Road on January
25 29th, 2022?

1 A Yes, it is.

2 MR. LALLY: Your Honor, with the Court's
3 permission, I would ask that the witness be allowed
4 to take it out of the bag and display it to the
5 jury.

6 THE COURT: Okay.

7 (Whereupon, the witness complies.)

8 MR. LALLY: Thank you, sir. You can place it
9 back in the bag at this time.

10 May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 MR. LALLY: Your Honor, the Commonwealth would
13 seek to introduce this as the next exhibit.

14 THE COURT: Okay. Yes.

15 (Whereupon, box containing broken glass in bag was
16 entered and marked Exhibit No. 45 in Evidence.)

17 THE COURT REPORTER: Exhibit 45.

18 BY MR. LALLY:

19 Q Now, Lieutenant Lank, once you were back at
20 the police station, what, if any, call did you receive
21 from anyone in regard to what had -- who, if anyone,
22 called you once you were back at the station?

23 A Jennifer McCabe called at 9:00 a.m.

24 Q And where did you go following that phone call
25 with Jennifer McCabe?

1 A Lieutenant Gallagher and I went back to 34
2 Fairview Road.

3 Q So this is now the third time that you've gone
4 back and gone inside the residence at 34 Fairview Road;
5 is that correct?

6 A That's correct.

7 Q And who, if anyone, did you speak with along
8 with yourself and Lieutenant Gallagher once you
9 returned there that morning?

10 A Jennifer McCabe.

11 Q And about how long a period of conversation
12 was that second conversation that you had with
13 Ms. McCabe?

14 A Between five and 10 minutes.

15 Q And then, following that, where did you go
16 from there?

17 A I returned to the police station.

18 Q Now, if I could turn your attention to
19 February 4th of 2022, were you working on that day?
20 was.

21 A I was.

22 Q And in the same capacity that you had
23 described earlier?

24 A Yes.

25 Q And, at some point -- well, at approximately

1 8:50 a.m. or so, who, if anyone, called you on that
2 day?

3 A Lieutenant Gallagher.

4 Q And what, if anything, or where did he direct
5 you to go during the course of that conversation?

6 A Lieutenant Gallagher directed me to go back to
7 34 Fairview Road and meet with Chief Berkowitz as he
8 had possibly discovered more evidence.

9 Q And, in the time between January 29th and
10 February 4th, had you gone back to 34 Fairview Road at
11 any point?

12 A No.

13 Q Now, between that time of January 29th, 2022
14 and February 4th of 2022, what, if anything, occurred
15 in regard to the weather in between those dates?

16 A So the weather had -- the temperatures had
17 increased, and there was some rain.

18 Q And increased, if you know, approximately how
19 much?

20 A I believe it made it up to the mid-40s.

21 Q So well above freezing; is that correct?

22 A Correct.

23 Q And, with regard to the snowfall that had come
24 from the 28th and into the 29th, what, if anything --
25 just in general, had you -- well, not in general.

1 Specifically to 34 Fairview Road, what, if
2 anything, did you observe between the snow that you
3 observed there on the 29th and the snow that you
4 observed there on February 4?

5 A A lot of the snow had melted and a lot of the
6 ground has been revealed.

7 Q And, when you arrived at 34 Fairview Road on
8 February 4th, what, if anything, did you observe and
9 where did you observe it?

10 A Chief Berkowitz brought my attention to a
11 piece of red glass that was about six to eight feet off
12 the -- into the yard.

13 Q Now, before we get to that, as far as when you
14 responded, who, if anyone, else from your department
15 responded along with you?

16 A Detective Tim Taylor.

17 Q The pieces of plastic that you observed, where
18 were they in relation to where you had observed or
19 where you had been directed to that Mr. O'Keefe had
20 been found on January 29th?

21 A The glass was in the vicinity of where
22 Mr. O'Keefe had been discovered.

23 Q Now, with respect to the pieces of plastic
24 that you observed, what, if anything, did you do to
25 memorialize where they were?

1 A I photographed the piece of plastic as it sat.

2 Q And did you or anyone in your presence touch,
3 manipulate or move those pieces of plastic in any way?

4 A No.

5 Q And, at some point after you arrived on scene,
6 who, if anyone, did you contact in regard to securing
7 those items?

8 A I contacted the CPAC unit and ultimately
9 Trooper Bukhenik arrived back at the scene.

10 Q And, if you know, about how much time elapsed
11 between the time that you contacted CPAC and the time
12 that Trooper Bukhenik arrived on scene?

13 A I honestly don't recall.

14 Q And, when Trooper Bukhenik arrived on scene,
15 what, if anything, did you observe him to do with those
16 pieces of plastic that you directed his attention to?

17 A Trooper Bukhenik secured the item into an
18 evidence bag.

19 MR. LALLY: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. LALLY:

22 Q I am showing you two photographs. I'd ask you
23 just briefly to look them over and then look up when
24 you're finished.

25 A (Witness complies.)

1 Q Do you recognize those, sir?

2 A I do.

3 Q What do you recognize in those photographs?

4 A I recognize this to be the piece of plastic
5 that Chief Berkowitz had observed on that morning.

6 Q And are those the photographs that you took
7 that morning, as well; is that correct?

8 A That's correct.

9 Q And what's contained in those photographs, is
10 that a fair and accurate portrayal of what you observed
11 on February 4th, 2022?

12 A Yes, it is.

13 MR. LALLY: Your Honor, the Commonwealth seeks
14 to introduce and admit as the next two exhibits.

15 THE COURT: Okay.

16 (Whereupon, photograph was entered and marked
17 Exhibit No. 46 in Evidence.)

18 (Whereupon, photograph was entered and marked
19 Exhibit No. 47 in Evidence.)

20 THE COURT REPORTER: Exhibits 46 and 47.

21 MR. LALLY: And, Ms. Gilman, if I could have
22 the first of those photographs up on the scene.

23 BY MR. LALLY:

24 Q And, Lieutenant Lank, do you recognize what's
25 depicted up on the scene currently?

1 A Yes.

2 Q And this is sort of a further-out image of
3 that piece of plastic you were talking about; is that
4 correct?

5 A Yes.

6 Q And, using the laser pointer before you, if
7 you could just draw the jury's attention to where in
8 the photograph you observed that piece of plastic?

9 A (Witness complies.)

10 MR. LALLY: Ms. Gilman, the next photograph.

11 Q And, sir, do you again recognize what's up on
12 the screen?

13 A Yes. That's a close-up picture of the piece
14 of plastic.

15 Q Thank you, sir.

16 MR. LALLY: Ms. Gilman, you can take those
17 down. If I may have one moment, Your Honor?

18 THE COURT: Yes.

19 MR. LALLY: Nothing further, Your Honor.

20 THE COURT: Okay. Mr. Jackson?

21 MR. JACKSON: Thank you, Your Honor. May we
22 approach briefly?

23 THE COURT: Sure.

24 (Whereupon, there was a sidebar conference as
25 follows:)

1 THE CLERK: I just wanted to let the Court
2 know that we anticipate going into the relationship
3 right off the bat. So if there is a instruction
4 that the Court --

5 THE COURT: With the whole incident right off
6 the bat?

7 MR. JACKSON: Correct, and get that out of the
8 way.

9 THE COURT: All right. Thank you.
10 (Whereupon, the sidebar conference concluded.)

11 THE COURT: Jurors, so you're about to hear
12 evidence of an event that happened in 2012. This
13 evidence can be considered by you insofar as it
14 demonstrates or relates to the credibility of this
15 witness and the thoroughness of the investigation
16 into this case for which the defendant is currently
17 on trial before you folks. You may use this
18 evidence to the extent that you find it credible in
19 deciding whether there was any bias or favoritism
20 on the part of the police in their investigation in
21 this case.

22 MR. JACKSON: May I?

23 THE COURT: Okay, Mr. Jackson. Yes.

24 CROSS-EXAMINATION

25 BY MR. JACKSON:

1 Q Lieutenant Lank, I want to start by asking you
2 about your relationship with certain members of the
3 Albert family. Do you know any other members of the
4 Albert family other than Brian Albert?

5 A Yes.

6 Q Can you describe who those are?

7 A Kevin Albert, who is a detective on our
8 department; Chris Albert. I know Tim Albert.

9 Q Are those three individuals brothers?

10 A Yes.

11 Q Who is the eldest brother?

12 A Brian.

13 Q How long have you known -- I want to start
14 first with Tim Albert. How long have you known
15 Tim Albert?

16 A I knew Tim Albert when he was a kid because he
17 was friends with a younger brother of a friend of mine.

18 Q Starting at what age?

19 A Twelve. He was 12. I was probably 16 or so.

20 Q Okay. So for the better part of your life,
21 you've known Tim Albert?

22 A Since about 16.

23 Q And what about Chris Albert?

24 A Chris Albert I've known since junior high.

25 Q Which would be about what age?

1 A Thirteen, 14.

2 Q You grew up with Chris?

3 A Twelve, 13. I was friendly with Chris from
4 junior high through high school and into our 20s.

5 Q And friendly with Tim?

6 A I wouldn't say I was -- I was friendly to say
7 "hello" to Tim. I didn't associate with him. He was
8 younger. He was Chris's younger brother.

9 Q But you also knew Chris's older brother,
10 Brian, from back in those days?

11 A Yes. I knew who he was.

12 Q So you've known the three of them for
13 basically your entire life?

14 A No. I had met them. I had met Brian. I
15 didn't know him other than just being Chris's older
16 brother when we were younger kids.

17 Q Certainly with regard to Chris, you would
18 consider him a close friend?

19 A Consider who a close friend?

20 Q Chris. I'm using first names only because
21 they are all named Albert.

22 A Sure. Sure. Chris and I were pretty good
23 friends when we were younger, yes.

24 Q I want to draw your attention to an incident
25 in August of 2002. Do you remember an incident in 2002

1 occurring with -- that involved Chris Albert?

2 A Yes.

3 Q In 2002, in August of 2002, specifically, you
4 were off-duty, correct?

5 A Yes.

6 Q You had been drinking alcohol, correct?

7 A Yes.

8 Q You were approached by Chris Albert out in a
9 parking lot; is that right?

10 A That's correct.

11 Q And Chris Albert told you some information
12 about being in a fight, that he had been in a fight or
13 an altercation of some sort, correct?

14 A He told me he had been in an altercation
15 earlier in the night and some threats had been made to
16 him and his family.

17 Q And you got out of your car and discussed this
18 with Mr. Albert, correct?

19 A No.

20 Q You just talked to him while you were seated
21 with him in your car?

22 A Yes.

23 Q Okay. At some point, did some other
24 individuals approach that same area?

25 A Yes.

1 Q Was there a fight that you believed was about
2 to ensue?

3 A Yes.

4 Q Did you get out of your car at that point?

5 A I did.

6 Q Did you come to Chris's aid by, quote,
7 unquote, "activating" yourself as an officer?

8 A I got out of my car, and I approached the
9 group. And I pleaded with them to not fight tonight.
10 I said, there's not going to be a fight tonight.
11 There's six of you guys. He's here with his
12 girlfriend. There's not going to be a fight tonight.

13 Q Did you come to Chris Albert's aid as best you
14 could as a longtime friend of his?

15 A I came to the aid of a citizen who was in fear
16 and in need.

17 Q That citizen happened to be Chris Albert, whom
18 you had known since you were 12 years old?

19 A Correct.

20 Q Ultimately, a fight did break out, did it not?

21 A Yes.

22 Q And you engaged in that fight?

23 A Yes.

24 Q And, again, you had been drinking alcohol at
25 that point, correct?

1 A Correct.

2 Q And you were off-duty in August of 2002 during
3 this fight?

4 A Yes.

5 Q Just like you were off-duty in 2022 when you
6 were called by Sergeant Goode to activate and come to
7 the crime scene at 34 Fairview?

8 A When Sergeant Goode contacted me, I was not
9 working. I was due to work at 7:45 that morning. When
10 Sergeant Goode contacted me and told me what was going
11 on, then I activated myself and came to work because I
12 was the detective sergeant.

13 Q And that's a similar sort of activation, using
14 that word in air quotes, it's a similar sort of
15 activation that you employed back in 2002 to assist
16 Chris Albert?

17 A No.

18 Q You did, in fact, call for someone to call the
19 police and get some Canton officers over there,
20 correct?

21 A Excuse me. So in 2002?

22 Q In 2002.

23 A Yes.

24 Q Okay. And I failed to ask you this, but, in
25 2002, you were, in fact, a Canton police officer at the

1 time?

2 A Yes.

3 Q After the other officers arrived, did you
4 order the other officers to handcuff or somehow
5 restrain one of the two brothers that were involved in
6 this fight with Chris?

7 A No.

8 Q Ultimately, did you see whether or not those
9 officers handcuffed or otherwise restrained one of the
10 brothers that was involved in this fight?

11 A Yes.

12 Q And did you then engage physically in a fight
13 with the other brother who was not restrained?

14 A No. The struggle had already occurred.

15 Q All right. So let me make sure I get the
16 timing right.

17 You did, in fact, engage in a physical fight
18 with one of the brothers, correct?

19 A Upon being struck, yes.

20 Q I'm sorry. Say that again?

21 A Upon being struck, yes.

22 Q And then you struck him back?

23 A Yes.

24 Q You ended up on the ground?

25 A Yes. We were wrestling. Yes.

1 Q And, ultimately, the other officers had to
2 pull you off that man, correct?

3 A No.

4 Q The fight was broken up between you and the
5 other brother, is that right?

6 A That's correct.

7 Q And that fight was broken up by the officers
8 who were on scene?

9 A Yes.

10 Q All right. After this physical altercation
11 with the brother who was not ultimately restrained,
12 both of the brothers and everybody else was just told
13 by the officers to go away, get out of here, go home,
14 correct?

15 A No. I believe one of the brothers left the
16 scene, fled the scene. And the brother that was
17 restrained was ultimately uncuffed and free to go.

18 Q And nobody was arrested that night?

19 A Correct.

20 Q Nobody chased down the brother that left the
21 scene, correct?

22 A That's correct.

23 Q And nobody arrested the brother that had been
24 handcuffed?

25 A Correct.

1 Q And no police reports were written by you or
2 any of the other officers about this incident on that
3 night?

4 A I don't recall when the other officers wrote
5 theirs. I did not write mine on that night.

6 Q The next day, you became aware that one or
7 both of the brothers had arrived at Canton Police
8 Department to file a formal complaint for having been
9 physically attacked by you and some of the other
10 officers involved, correct?

11 A I don't recall when I was made aware that they
12 had come down to the police station.

13 Q You are aware that there was a complaint
14 sought against you for the physical attack that was
15 alleged to have occurred, correct?

16 A It was brought to my attention that they had
17 come down to the police station.

18 Q And you were also aware that only after that
19 complaint had been sought, the police reports were then
20 dated and filed against the two brothers, correct?

21 A So I had spoken to the sergeant on duty --

22 Q That's a yes-or-no question. I'm just looking
23 at timing.

24 A It's not a yes-or-no question.

25 THE COURT: He is just asking you about dates.

1 So can you answer the question? Ask the question
2 for the dates again, please.

3 THE WITNESS: Could you repeat it?

4 BY MR. JACKSON:

5 Q Of course. I'm seeking the chronology of
6 events. The fight occurs. A complaint against you
7 occurs, and then police reports are filed against the
8 two people that are complaining against you. Is that
9 the chronology?

10 A Yes.

11 Q And you're also aware that although he had
12 been in a physical fight that night, no charges were
13 ever brought against Chris Albert, correct?

14 MR. LALLY: Objection, Your Honor.

15 THE COURT: Do you know that?

16 THE WITNESS: I don't know. I don't even know
17 where the fight occurred.

18 BY MR. JACKSON:

19 Q Officer Lank, what we just talked about, is
20 that an example of you using your position as a police
21 officer to come to the aid of one of the members of the
22 Albert family?

23 A It was me coming to the aid of a citizen who
24 was terrified and scared for him and his family on that
25 night.

1 Q Who happened to be --

2 A Who happened --

3 Q What?

4 A Who happened to be Chris Albert.

5 Q You mentioned Kevin Albert. Who is he?

6 A Kevin Albert is a detective with the Canton
7 Police.

8 Q Is he a co-worker?

9 A Yes.

10 Q How long have you known him?

11 A Probably since 14, 15 years old.

12 Q And you also consider him to be a friend as
13 well as a co-worker?

14 A I do.

15 Q And a colleague?

16 A Yes.

17 Q And you're also well aware. I mean, you've
18 said it already. He's the brother, little brother, of
19 Brian Albert?

20 A Correct.

21 Q And you're also aware that the reason that
22 your department was ultimately recused from this
23 investigation, Lieutenant Lank, is because of a
24 perceived bias or conflict of interest between the
25 Albert family or the Canton Police Department, correct?

1 A Yes. There was a perceived bias.

2 Q Can you tell me one more time -- and now I
3 want to fast forward to the incident in question. What
4 was the exact time that you arrived at the location if
5 you know?

6 A I believe it was around 6:24, 6:25.

7 Q Okay. And you indicated that that was in
8 response to a call that you got from Sergeant Goode?

9 A Yes. That's correct.

10 Q What made you decide or could you have decided
11 to take this particular call? Was it up to you, in
12 other words?

13 A I would never not take that call.

14 Q Okay. Fair enough. So once you got the call,
15 you knew that you were going to respond because there
16 was something very serious afoot?

17 A Correct.

18 Q Did you know at the time you got the call that
19 that very serious incident was occurring at 34
20 Fairview?

21 A No.

22 Q When did you realize that?

23 A Upon speaking with Sergeant Goode.

24 Q Okay. So Sergeant Goode didn't -- I guess
25 that's what I'm -- maybe I asked an inartful question.

1 I was asking whether or not Sergeant Goode told you
2 before you actually arrived, he sort of had to have,
3 that it's at 34 Fairview?

4 A He did.

5 Q Okay. At that point, did a lightbulb go off
6 and you think to yourself, ding, that's the Albert
7 house?

8 A I don't recall if I realized it then or once I
9 turned onto the street. I don't recall.

10 Q At some point before your car came to a stop,
11 you knew this is 34 Fairview; this is the Albert
12 household?

13 A I knew that that was Brian Albert's house,
14 yes.

15 Q When you arrived, who was the ranking officer
16 at the scene? You've mentioned -- obviously, we've
17 heard these names. Sergeant Goode. There's
18 Officer Mullaney. There's Officer Saraf and you. Who
19 was the ranking officer?

20 A When I arrived, Sergeant Goode was the ranking
21 officer.

22 Q Have you reviewed either -- well, let me ask a
23 different question.

24 Did you have a dash cam in the vehicle that
25 you arrived in?

1 A I did not.

2 Q And that's because it was a -- was that a
3 detective vehicle?

4 A Yes.

5 Q Sometimes used undercover, et cetera?

6 A Yes.

7 Q So it's not a fully marked cruiser?

8 A No, not at all.

9 Q The other cruisers, you're aware, did have
10 dash cams, correct?

11 A Yes.

12 Q Have you reviewed any or all of those dash
13 cams from Officer Mullaney, Officer Saraf,
14 Sergeant Goode?

15 A Yes.

16 Q And you reviewed those in preparation for your
17 testimony?

18 A Yes.

19 Q I'd like to show you what's been previously
20 marked as Exhibit 16.

21 MR. JACKSON: And I'm going to ask if you,
22 Mr. Bates, could fast forward that to the runtime
23 of about 28:35 or so, with the Court's permission?

24 THE COURT: Yes.

25 BY MR. JACKSON:

1 Q Before we play this, there appears to be a
2 still image of --

3 THE COURT: So let's not describe it --
4 BY MR. JACKSON:

5 Q What do you see on the screen?

6 A I see two still images.

7 Q Okay. Do you recognize either or both of
8 those images?

9 A Yes.

10 Q How do you recognize them?

11 A It looks like the scene from that morning. I
12 believe it's going to be -- the top one anyway is
13 definitely 683, Officer Saraf's cruiser.

14 Q And the bottom one?

15 A I'm not sure.

16 Q Okay.

17 A It looks like possibly Sergeant Goode's, based
18 on where it's placed.

19 MR. JACKSON: If we could fast forward to the
20 28:40 mark or so, Mr. Bates, and play that. And
21 let's pause it for a second.

22 Your Honor, may we approach briefly?

23 THE COURT: Okay.

24 (Whereupon, there was a sidebar conference as
25 follows:)

1 MR. JACKSON: I just wanted to briefly let you
2 know so you don't become impatient, I'm going to
3 play about five minutes of this and stop it at
4 certain points, about four different points in the
5 five and a half minutes in total.

6 THE COURT: Okay. Just don't narrate it.

7 MR. JACKSON: I won't.

8 THE COURT: Okay.

9 MR. JACKSON: Okay.

10 (Whereupon, the sidebar conference concluded.)

11 BY MR. JACKSON:

12 Q You indicated that you have reviewed these
13 videos in anticipation of your testimony today,
14 correct?

15 A Yes.

16 Q I'm going to ask you to direct your attention
17 to the top video and specifically to an area right
18 around this area in the video, which is highlighted.
19 Before we play, a couple of foundational questions.

20 Did you meet with Jennifer McCabe out behind
21 the vehicle that's depicted in the Officer Saraf dash
22 cam?

23 A Yes.

24 Q Did you have some sort of a conversation with
25 her?

1 A I did.

2 Q At some point, did you see Ms. McCabe leave
3 your presence and walk toward the driveway?

4 A Once the conversation had terminated, I
5 honestly don't recall where she went.

6 Q Did she tell you that she intended to go
7 inside the house?

8 A I had said to her that at some point we were
9 going to speak to Brian and Nicole.

10 Q Why did you think it was important to speak to
11 Brian and Nicole?

12 A Because it's their property.

13 Q And somebody was laying in the snow,
14 unconscious and unresponsive, correct?

15 A Correct.

16 Q And obviously that could potentially, at
17 least, implicate people inside the house?

18 A Based on my conversation with Ms. McCabe, she
19 had stated that the intention was for Mr. McCabe --
20 excuse me -- for Mr. O'Keefe to join them at that
21 house. So I wanted to get statements from everybody
22 who was there.

23 Q To find out what happened, right?

24 A Correct.

25 Q I mean, that's sort of the obvious initial

1 point of an investigation: to find out who the
2 witnesses are and interview all of them, correct?

3 A Correct.

4 Q And you began by talking to Ms. McCabe?

5 A Yes.

6 Q Knowing that she was as potential witness, at
7 least, correct?

8 A She identified herself as a friend of
9 Mr. O'Keefe.

10 Q Who had been with Mr. O'Keefe just hours
11 before?

12 A Yes.

13 Q He ended up laying in the snow, fighting for
14 his life, correct?

15 A Yes. That's correct.

16 Q And you also knew that there were other
17 witnesses potentially inside the house because she just
18 told you that, right?

19 A I knew that that was ultimately where he was
20 supposed to end up.

21 Q So if there were other witnesses in the house
22 -- sorry. If there were other individuals in the
23 house, they also were potential witnesses?

24 A Potentially.

25 Q And Ms. McCabe indicated, I'm going to go in

1 the house, correct?

2 A I had told her that she's going to have to
3 wake her sister up because we're going to need to speak
4 with her.

5 Q You didn't think that it was more important to
6 separate the witnesses and not let her talk to other
7 witnesses?

8 A No.

9 Q You thought that it was appropriate to let all
10 the witnesses get together and just discuss the facts
11 before you had an opportunity to interview them
12 separately?

13 MR. LALLY: Objection.

14 THE COURT: Sustained as to the form.

15 MR. JACKSON: I'm just letting the siren go
16 by.

17 THE COURT: That's fine.

18 BY MR. JACKSON:

19 Q Lieutenant Lank, if you could direct your
20 attention to the area that I highlighted earlier.
21 Let's go ahead and play the video.

22 (Whereupon, the video is played.)

23 MR. JACKSON: Stop.

24 Q Did you see anything occur at or around the
25 car in the distance?

1 A It appears to be somebody walking towards the
2 house.

3 Q Was that Jen McCabe?

4 A I can't say for sure.

5 Q Do you see yourself, by the way, in this
6 video?

7 A Yes.

8 Q Where are you?

9 A (Indicating.)

10 Q You've described sort of the -- I don't know
11 if it's tan or gray.

12 A It's a gray North Face jacket with black on
13 the top.

14 Q Okay. Toward the shoulders?

15 A Yes.

16 Q All right. Let's go ahead and play the video,
17 and I'll indicate another stopping place that I'd like
18 to ask you a couple of questions about.

19 (Whereupon, the video is played.)

20 Q Did you see another person shorter in stature
21 approaching?

22 A I believe right there. Yes.

23 Q Yes, sir.

24 A Yes.

25 Q Who is that?

1 A I believe it's Kerry Roberts.

2 Q Okay.

3 MR. JACKSON: Okay. Go ahead and play. Pause
4 it.

5 (Whereupon, the video is played and paused.)

6 Q Did you see yourself just exit the screen
7 right?

8 A Yes.

9 Q Did it appear that you had something in your
10 hand?

11 A Yes.

12 Q You were taking a call on your cell phone?

13 A Yes.

14 Q What was that call?

15 A I don't recall. It could have -- I can't see
16 what time that is. I don't believe that I made the
17 call to the CPAC unit until around 6:38. So I'm not
18 sure who that call is to, was from.

19 Q If you'll direct your attention I think now
20 down toward the camera below, you may see yourself
21 enter the front. Can we go ahead and play it?

22 (Whereupon, the video is played.)

23 MR. JACKSON: And go ahead and pause it.

24 (Whereupon, the video is paused.)

25 Q Does it appear you're on the phone?

1 A Yes.

2 MR. JACKSON: Go ahead.

3 (Whereupon, the video is played.)

4 MR. JACKSON: Pause it.

5 (Whereupon, the video is paused.)

6 Q Did it appear that you walked off-screen left?

7 A Yes.

8 Q Are you still on the phone?

9 A Yes.

10 MR. JACKSON: Go ahead.

11 (Whereupon, the video is played.)

12 MR. JACKSON: Pause it.

13 (Whereupon, the video is paused.)

14 Q Did you see someone following that same
15 direction?

16 A It looked like Officer Saraf.

17 MR. JACKSON: Go ahead and play it.

18 (Whereupon, the video is played.)

19 THE WITNESS: Actually, I'm wrong because
20 that's Officer Saraf right there. So I'm
21 incorrect.

22 MR. JACKSON: Pause it.

23 (Whereupon, the video is paused.)

24 Q Do you think it might have been Sergeant
25 Goode?

1 A Could we play it back?

2 MR. JACKSON: With the Court's permission.

3 THE COURT: Sure. Go ahead.

4 (Whereupon, the video is played.)

5 MR. JACKSON: And pause.

6 (Whereupon, the video is paused.)

7 Q Do you recognize that person?

8 A Yes. I'm mistaken. It's Sergeant Goode.

9 MR. JACKSON: Okay. Go ahead.

10 (Whereupon, the video is played.)

11 MR. JACKSON: Pause it.

12 (Whereupon, the video is paused.)

13 Q Does it appear that you've walked back into
14 the frame?

15 A Yes.

16 Q Are you followed by anybody?

17 A I believe it's still Sergeant Goode.

18 Q Are you speaking to Sergeant Goode or are you
19 walking away from him or can you tell?

20 A In that frame, it appears I'm standing right
21 next to him.

22 Q Okay.

23 MR. JACKSON: Go ahead and play it.

24 (Whereupon, the video is played.)

25 MR. JACKSON: Pause it.

1 (Whereupon, the video is paused.)

2 Q Did appear that you were sort of walking away
3 from Sergeant Goode off frame again?

4 A Yes. It appears that I'm pacing.

5 Q Were you still on the phone?

6 A Yes.

7 MR. JACKSON: Thank you. Go ahead.

8 (Whereupon, the video is played.)

9 MR. JACKSON: Pause it.

10 (Whereupon, the video is paused.)

11 Q Directing your attention to the top video, do
12 you see the SUV in the video?

13 A Yes.

14 Q Does that SUV appear to be leaving the scene?

15 A Yes.

16 Q Do you know who was in that SUV?

17 A I believe it's gonna be Kerry Roberts and
18 Karen Read.

19 MR. JACKSON: Okay. Go ahead and play it.

20 (Whereupon, the video is played.)

21 MR. JACKSON: Pause it.

22 (Whereupon, the video is paused.)

23 Q At that point, are you walking back into the
24 frame on the lower video?

25 A Yes.

1 Q At this point, Lieutenant, are the lights at
2 34 Fairview on or off?

3 A They still appear to be on.

4 Q And, at some point while you were still at the
5 scene, did the lights come on? I think you testified
6 to that earlier.

7 A Yes.

8 Q Okay. I'd like you to pay special attention
9 to that moment and maybe tell me to stop when you see
10 those lights come on. It may be a minute or so.

11 A Sure.

12 MR. JACKSON: You can play it.

13 (Whereupon, the video is played.)

14 Q At this point, does it appear that you're
15 still on the phone?

16 A Yes.

17 MR. JACKSON: Pause it.

18 Q At this point, is there anything that changed
19 in the scene?

20 A Yes.

21 Q What's that?

22 A It appears that there's now a light on inside
23 the home.

24 Q And, at this point, Ms. McCabe has been inside
25 the house for approximately how long, if you could

1 estimate?

2 A Maybe three minutes.

3 Q And are you still on the phone, or have you
4 ended that call?

5 A I can't tell if I'm still on the phone at that
6 point. I know that right around this time is when I
7 ended speaking to the CPAC unit because I believe I get
8 into the vehicle.

9 MR. JACKSON: Let's play just a little bit
10 further forward, maybe another 30 seconds or so.
11 (Whereupon, the video is played.)

12 MR. JACKSON: Okay. Stop it.
13 (Whereupon, the video is paused.)

14 Q Does it appear at this point, if you can see,
15 does it appear that you've ended that call or at least
16 your hands are down by your side?

17 A I can't tell.

18 MR. JACKSON: That's all as to that.

19 Q You would agree with me that without counting
20 the seconds, that was about a five-minute phone call or
21 maybe a little better than five minutes?

22 A I wasn't watching, to be honest.

23 Q Do you have any idea who you were talking to
24 now that you've seen that?

25 A I could make an educated guess, but I don't

1 know for sure.

2 Q You did notice that several minutes after
3 Jen McCabe went in the house and while you were on that
4 phone call, the lights finally came on at 34 Fairview,
5 correct?

6 A Correct.

7 Q At the point the lights came on, the ladder
8 truck had already gone, left from the scene, correct,
9 the fire engine?

10 A I believe so.

11 Q The firefighters are all gone?

12 A Yes.

13 Q The ambulance has already left and transported
14 Mr. O'Keefe?

15 A Yes.

16 Q The paramedics are gone, the EMTs?

17 A Yes.

18 Q The fire captain and his SUV, that's gone?
19 Is that right?

20 A I'm sorry. Was there a question?

21 Q The fire captain and his SUV, that's gone?

22 A I'm not sure.

23 Q In other words, all the fire and EMTs have
24 cleared the scene?

25 A I don't see them on camera.

1 Q It doesn't appear that any fire or EMTs are
2 still on the scene, correct?

3 A It doesn't appear so.

4 Q Kerry Roberts is gone?

5 A Yes.

6 Q Karen Read is gone?

7 A Yes.

8 Q So when the only parties left at the scene are
9 members of the Albert family, Jen McCabe and the Canton
10 Police Department representatives, that's when the
11 lights inside 34 Fairview finally come on?

12 A Okay.

13 Q Is that yes?

14 A Yes.

15 Q And then minutes after that call, you did then
16 speak to CPAC -- I'm sorry -- to dispatch, correct?

17 A CPAC dispatch.

18 Q Right. I was getting to that. It was a
19 dispatch, and the dispatch was to CPAC, not to Canton
20 P.D.?

21 A Correct.

22 Q And, at some point, did CPAC dispatch indicate
23 that they were on their way, they had declined the
24 call? What was that call all about?

25 A So there are two separate calls.

1 MR. LALLY: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. JACKSON:

4 Q Who did you talk to at CPAC?

5 A I don't recall who handled the first call at
6 dispatch.

7 Q Okay. Do you remember having a conversation
8 with Kelly Dever?

9 A No. I think we are talking about two
10 different things. I am talking CPAC dispatch, not
11 Canton Police dispatch.

12 Q Okay. Fair enough. At some point, did you
13 have a conversation with -- well, let me ask it this
14 way. I just don't know. Did you talk to both Canton
15 dispatch and CPAC dispatch?

16 A I definitely spoke to CPAC dispatch. I'm not
17 sure if I spoke to Canton dispatch or not.

18 Q All right. At some point, did you say -- did
19 you indicate to one or the other, I'm responding to 34
20 Fairview. We have a Boston police officer who was just
21 found?

22 A I stated that I was already at 34 Fairview, I
23 believe.

24 Q You indicated that he does have some trauma to
25 his head area, correct?

1 A That's correct.

2 Q And you said, quote, "I'm not sure if he's
3 been in a fight or whatever. Our medics don't believe
4 he's going to make it."

5 A Correct.

6 Q End quote. Sergeant Lank, you never saw
7 John O'Keefe's body, correct?

8 A Correct.

9 Q So if somebody disclosed to you that it
10 appeared that he had been in a quote, "Fight or
11 whatever," at least at that point, that was your
12 thought?

13 A No.

14 Q Then what made you -- well, you didn't say to
15 dispatch the victim appears to have been shot, correct?

16 A Correct.

17 Q You didn't say it appeared that he had been
18 stabbed?

19 A No.

20 Q He had been strangled?

21 A No.

22 Q You didn't say it appeared he'd been hit by a
23 car?

24 A Correct.

25 Q You said, it appeared that he's been in a

1 fight or whatever, correct?

2 A I stated that he had some trauma to his head.
3 And I said, I don't know if he had been in a fight.
4 And then I believe I described it as a -- I don't
5 remember my exact terminology. But it was a crazy
6 scene.

7 Q A chaotic scene?

8 A Possibly. I don't recall my exact words.
9 Something to that effect.

10 Q But you do recall your exact words to dispatch
11 being, I don't know if he's been in a fight or
12 whatever?

13 A Correct.

14 Q Okay. I want to talk about inside the house
15 for just a few minutes, if I could.

16 You've talked extensively about the crime
17 scene outside, and we will get to that in a second.
18 But I want to talk about what did or did not happen
19 inside the house.

20 Did you actually make it inside the house at
21 some point?

22 A Yes.

23 Q When was that? How long -- let's use
24 Jennifer McCabe as the time frame. How long after that
25 did you finally go inside the house after she had been

1 in the house?

2 A So it was specifically just after I had got
3 off the phone with CPAC.

4 Q So just a few minutes after we ended that
5 video?

6 A Yes.

7 Q And you walked either -- you said either along
8 the driveway or in the yard?

9 A I believe it was up the driveway.

10 Q Okay. Once you went in the house, you made
11 contact with the individuals in the house, correct?

12 A Yes.

13 Q And you believed at least at that point that
14 there was a potential that there was a -- let me
15 rephrase that.

16 You knew that you were dealing with a violent
17 incident, correct?

18 A No.

19 Q You thought maybe it was just a heart attack?

20 A I didn't know what it was. At that point in
21 time, I didn't know what it was. It could have been a
22 multitude of things.

23 Q But what was going through your mind at that
24 point was it could have been a fight or whatever
25 because he had trauma to his head? Those were your

1 words?

2 A Those were my words, yes.

3 Q So you didn't think it was like some old man
4 who died of old age, right?

5 A Based on his age, no. I wouldn't have
6 suspected that.

7 Q You didn't think it was an accidental drowning
8 or something?

9 A Again, it could have been a multitude of
10 things to cause those injuries. So at that point in
11 time, we had no idea what we were looking at.

12 Q But you were aware that it had something to do
13 with a violent incident? He had trauma to his face and
14 he's unconscious, correct?

15 MR. LALLY: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MR. JACKSON:

18 Q Did you believe that there were any indicators
19 that Mr. O'Keefe had been involved in some sort of a
20 physical altercation?

21 A Possibly.

22 Q Okay. And that's because you used the phrase
23 "he had trauma to his face and head," right?

24 A That's what I had been told, yes.

25 Q Okay. So based on what you had been told, you

1 knew that there was a person laying out unconscious
2 just outside a residence that may have been involved in
3 a physical altercation? That's fair?

4 A It's a possibility, yes. Again, there were a
5 multitude of things that were going through my head.
6 It's a possibility.

7 Q But that's one of the premiere possibilities,
8 right?

9 A I wouldn't say it's a premiere. It's one of
10 the possibilities.

11 Q And it's logical to believe that if a fight
12 had occurred, it very well may have started inside the
13 residence, 30 feet away?

14 MR. LALLY: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. JACKSON:

17 Q Did you believe in your mind that it was
18 possible, given the fact that a violent confrontation
19 was possible in your mind, that it could have started
20 inside the house?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 MR. JACKSON: May we approach?

24 THE COURT: Yes.

25 (Whereupon, there was a sidebar conference as

1 follows:)

2 THE COURT: What is the objection, Mr. Lally?

3 MR. LALLY: It calls for speculation.

4 MR. JACKSON: This goes directly to something
5 -- it's not asking him to speculate. I'm asking
6 him what his state of mind at the time was.

7 THE COURT: You have to ask it differently.
8 You were asking him to speculate. Ask it
9 differently.

10 MR. JACKSON: Okay.

11 (Whereupon, the sidebar conference concluded.)

12 MR. JACKSON: May I?

13 THE COURT: Sure.

14 MR. JACKSON: Thank you.

15 BY MR. JACKSON:

16 Q Lieutenant Lank, given what you believed at
17 the time and the possibility that there was a fight or
18 whatever, did you logically think in your mind, your
19 state of mind, was it possibly it could have started in
20 the house?

21 A If it had been a confrontation, it could have
22 started anywhere.

23 Q Right. The house is part of anywhere, right?

24 A Correct.

25 Q So, in other words, the house is not excluded

1 in your mind at that point as a starting point for the
2 investigation; is that right?

3 A The starting point where Mr. O'Keefe had been
4 discovered and then based on speaking with the
5 witnesses, there was no indication that he had ever
6 made it into the house.

7 Q Well, you didn't know that until you followed
8 up on your investigation, correct?

9 A I learned that by speaking to Ms. McCabe.

10 Q So you just took Ms. McCabe's word for it?

11 A At that point in time, that was the only
12 person I had spoken to. And she gave me a timeline of
13 events from that night where Mr. O'Keefe was supposed
14 to come back to the house but never made it.

15 Q Have you ever been, in the course of your
16 investigating cases, have you ever been lied to by a
17 witness?

18 MR. LALLY: Objection, Your Honor.

19 THE COURT: Can you answer that? Have you
20 ever been lied to by a witness?

21 THE WITNESS: Yes.

22 BY MR. JACKSON:

23 Q So it's not necessarily the best investigative
24 technique to just take a witness's word for something,
25 correct?

1 MR. LALLY: Objection.

2 THE COURT: That's sustained.

3 BY MR. JACKSON:

4 Q You need to actually investigate the
5 circumstances for yourself and to your own
6 satisfaction. Is that a fair statement?

7 A Sure.

8 Q One of those investigative techniques would be
9 to walk into the house and figure out who's who there,
10 correct?

11 A Can you rephrase the question?

12 Q Sure. One of those investigative techniques
13 to satisfy yourself that you're actually getting to the
14 truth of the matter would be to walk into the house and
15 figure out who's in the house first?

16 A I will agree that I needed to speak to the
17 people in the home. I can't just walk in their house.
18 I have to announce myself and they don't have to let me
19 in.

20 Q I understand. I'm not trying to parse those
21 words. I just mean entering the home and interviewing
22 witnesses. That would be a normal part of your
23 investigation initially, correct?

24 A Yes.

25 Q And you also knew that the most obvious place

1 to look for witnesses that may have information about a
2 fallen man in the snow would be 30 feet away in the
3 home, correct?

4 A Correct.

5 Q So once you're inside the residence, you
6 walked in the front door, correct?

7 A Yes.

8 Q You indicated that there's a stair that serves
9 as the second floor; is that right?

10 A Straight ahead, yes.

11 Q Right. And just before the staircase, there
12 is a door to your left, right?

13 A I don't recall.

14 Q Do you remember whether or not there is a door
15 that when you open it, it goes directly downstairs to
16 the basement?

17 A I don't recall.

18 Q You indicated on direct examination that you
19 didn't notice -- I'm paraphrasing. So forgive me. You
20 didn't notice anything out of place in the home?

21 A Correct.

22 Q But you didn't go downstairs to the basement
23 and look, did you?

24 A No.

25 Q You didn't look for broken furniture down

1 there?

2 A I didn't enter the basement at all.

3 Q You didn't look for torn clothing down there?

4 MR. LALLY: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q How about anywhere in the house? Did you look
8 for broken furniture or torn clothing or blood evidence
9 or DNA evidence?

10 A At that point in time, I never made it past
11 the front foyer area.

12 Q So the answer to my question is, no, you did
13 not?

14 A I never made it past the front foyer area.

15 Q So if I were to ask you one more time -- I
16 know you'd never made it past the foyer. Did you ever
17 investigate the foyer area or any other part of the
18 house for evidence of a fight?

19 A The only area I was able to observe at that
20 point, everything appeared to be in order.

21 Q But you didn't search the rest of the house
22 for a fight, Lieutenant? That's all I'm asking.

23 A No. I wouldn't have had probable cause to do
24 so.

25 Q And did you seek guidance from a court as to

1 whether or not you might have probable cause?

2 A Do you mean a search warrant?

3 Q That's what I mean.

4 A I wouldn't fill out an affidavit for a search
5 warrant because I wouldn't have probable cause.

6 Q In your mind, there was no P.C. to search that
7 house, right?

8 MR. LALLY: Objection.

9 THE COURT: Let's move on from this.

10 BY MR. JACKSON:

11 Q One of the ways to secure a premises, any
12 premises, at a normal crime scene investigation would
13 be to remove the witnesses and animals from that
14 premises to sort of freeze and lock it down, correct?

15 A If there is reason to do so, yes.

16 Q Okay. Were the witnesses in this case asked
17 to come outside the house in order to freeze the house
18 down as a potential crime scene?

19 A No.

20 Q Were any animals removed in order to freeze
21 and lock down the house as a potential crime scene?

22 A I didn't observe any animals.

23 Q Did you -- and this is the last question on
24 this issue. Did you do anything to lock down and
25 secure that premises, the inside of the house, in any

1 way, shape, form or fashion?

2 A Can you rephrase that, please?

3 Q Sure. Did you do anything to lock down and
4 secure that premises in any way, shape, form or
5 fashion?

6 A No.

7 Q Did you allow witnesses to go inside the house
8 other than Jen McCabe?

9 A Yes.

10 Q Who was that?

11 A I believe Matt McCabe entered the house after
12 I had come out.

13 Q And did you seek to separate any of the
14 witnesses or admonish them that they are not to be in
15 each other's presence and discuss the facts of the case
16 before you had an opportunity to interview them?

17 A No.

18 Q And, as you sit here, you have no idea when
19 you were not in their presence, you have no idea what
20 the occupants of that house were discussing?

21 A Correct.

22 Q Or what they were doing?

23 A I have no idea what they were doing.

24 MR. JACKSON: May I have just a moment, Your
25 Honor?

1 THE COURT: Yes.

2 BY MR. JACKSON:

3 Q Given the fact that you were the first law
4 enforcement officer inside the house, did you seek to
5 photograph anything inside the house?

6 A When you say I was the first law enforcement
7 officer, I was with Sergeant Goode. We both walked in
8 at the same time.

9 Q That's fair. I don't mean to be vague. But
10 you were sort of leading the discussion, correct, with
11 the interviews?

12 A Yes.

13 Q At least according to Sergeant Goode, you were
14 taking charge?

15 A Sure.

16 Q As the first law enforcement to take charge
17 inside the house, did you seek to photograph the
18 premises of that location?

19 A No, I did not.

20 Q Did you make any drawings or diagrams of the
21 layout of the house?

22 A No, I did not.

23 Q Did you note where the furniture was or was
24 not?

25 A I don't know what you mean.

1 Q Did you note in a diagram where furniture was?
2 There's a dining room table here. It's got six chairs.
3 There is a kitchen table over there.

4 A No, I do not.

5 Q Did you note in any document where the
6 individuals were, the human beings were, in relation to
7 each other when you walked in the house?

8 A Are you asking me where or did I --

9 Q I'm asking you whether you documented that.

10 A No.

11 Q Okay. Had you been told at the time that you
12 went in the house that when John O'Keefe was found out
13 in the yard that there was a shoe missing, his right
14 shoe was missing?

15 A No.

16 Q You didn't have that investigation yet?

17 A I did not.

18 Q Did you subsequently learn that?

19 A I learned that much later after we had already
20 cleared the area.

21 Q Tell me what "much later" means. Days, hours,
22 weeks?

23 A I honestly couldn't give an exact answer on
24 that.

25 Q I think I know the answer for this, but you

1 didn't do any search for any missing clothing from the
2 victim inside the house?

3 A I did not.

4 Q The last issue, the last question or last
5 series of questions on this issue, you understand the
6 importance of electronic devices in modern
7 investigations, correct?

8 A Yes.

9 Q iPads, cell phones, things of that nature?

10 A Sure.

11 Q Because they can record things like
12 photographs, videos, conversations, text messages and
13 emails?

14 A Yes.

15 Q Would you consider electronic devices
16 relatively vital in modern law enforcement
17 investigations?

18 A I'm sorry. Violent?

19 Q Vital. Critical.

20 A Yes.

21 Q They're critical items of evidence, right?

22 A Yes.

23 Q It's like walking around with your entire life
24 in the palm of your hand, correct?

25 A Correct.

1 Q Did you seek to secure any electronic devices
2 from any of the occupants of the house that morning?

3 A No.

4 Q Did you ask for consent to look through their
5 electronic devices, for instance, their cell phones for
6 text messages or communications?

7 A No.

8 Q Did you believe -- well, turning back to a
9 question that you were asked by Mr. Lally, you did, in
10 fact, interview Brian Albert at the scene, correct?

11 A Yes.

12 Q You also interviewed his wife?

13 A Yes.

14 Q Did you believe at any point before you
15 interviewed Mr. Albert that it was incumbent upon you
16 to let your supervisors know that there may be a
17 conflict of interest because of a personal relationship
18 that you had with the family?

19 MR. LALLY: Objection.

20 THE COURT: Sustained.

21 BY MR. JACKSON:

22 Q Did you ever, in fact, not whether you
23 believed it was important, but did you ever, in fact,
24 notify any of your superiors at Canton P.D. or any
25 other law enforcement agency that you had a personal

1 relationship with the Albert family or members of the
2 Albert family?

3 A I do not.

4 Q You indicated that you believe you spoke to
5 Mr. Albert and his wife, Nicole Albert for maybe 15 to
6 20 minutes; is that what you said?

7 A Roughly.

8 Q Did you record that conversation?

9 A I did not.

10 Q You had your cell phone with you, correct?

11 A Yes.

12 Q And you know that has recording capability?

13 A Yes.

14 Q Was anybody else with Nicole -- when I say
15 "with," I mean within earshot of Nicole and Brian
16 Albert when you interviewed either one of them or both
17 of them?

18 A Jennifer McCabe.

19 Q So you interviewed them together?

20 A Yes.

21 Q Did you then interview Jennifer McCabe?

22 A I had spoken to Jennifer McCabe outside to the
23 best of my memory. I believe once we were inside, I
24 was able to get some more information from her based on
25 the chronological order of events.

1 Q And, when you were getting this information
2 about the chronological order of events, that was
3 within earshot of Brian Albert and Nicole Albert?

4 A Yes.

5 Q So when you interviewed Brian Albert, Nicole
6 and Jennifer McCabe were listening, correct?

7 A Yes.

8 Q When you interviewed Nicole Albert, Brian
9 Albert and Jennifer McCabe were listening?

10 A Yes.

11 Q And, when you got this chronological layout of
12 the night before from Jennifer McCabe, Brian and Nicole
13 were both listening?

14 A Yes.

15 Q After you met with the three of them and
16 interviewed them, you indicated that you came back.
17 You'd already left and came back. And I'm jumping
18 ahead a little bit. So forgive me. When you came
19 back, it was around 9:00 a.m.?

20 A No. I came back just moments later.

21 Q Had you actually left? I may be a bit
22 confused. So I apologize. Had you actually left and
23 then driven back to Canton P.D.?

24 A No.

25 Q Okay. So you just came back in the house?

1 A When Mr. McCabe entered the house?

2 Q No. I'm so sorry. I'm jumping ahead. That's
3 unfair.

4 You've left. Now we are at the point where
5 you've already cleared the crime scene.

6 A Okay.

7 Q And then at some point you get called back,
8 correct?

9 A Yes.

10 Q Because Ms. McCabe said she had additional
11 information she wanted to impart?

12 A Yes.

13 Q When you interviewed Ms. McCabe that second
14 time, were Brian and Nicole Albert there?

15 A Yes.

16 Q Were they within earshot?

17 A Yes.

18 Q And they listened to that conversation, as
19 well?

20 A Yes.

21 Q After that conversation, did you meet with any
22 other witnesses between January 29th, later in the day
23 January 29th, anytime until February 4th?

24 A No.

25 Q None?

1 A No.

2 Q Okay. I do want to talk for a second, just a
3 brief second, about setting up a crime scene outdoors.
4 You indicated that the crime scene was relatively
5 secure, was your word, was relatively secure because
6 there were patrol cars, cruisers, sort of around the
7 perimeter of the yard?

8 A Yes.

9 Q Is that right?

10 A That's correct.

11 Q The crime scene tape wasn't working because it
12 was windy?

13 A The crime scene tape was up, but it was being
14 blown all over the place.

15 Q Okay. And, of course, Canton P.D. has the
16 ability to go get stakes and just hammer some stakes
17 into the dirt if you wish to?

18 A No.

19 Q You don't have stakes at Canton --

20 A No.

21 Q I don't mean steaks that you eat.

22 S-T-A-K-E-S.

23 A I know what a stake is. No. We don't have.

24 Q Okay. Canton P.D. doesn't have those? Okay.
25 So if the crime scene tape was blowing down, that was

1 just sort of a "let's give up on it; it wouldn't do any
2 good"?

3 A No.

4 Q In your mind, it was futile?

5 A The crime scene tape was futile, yes. It was
6 left up until we made the determination to take it
7 down, but it wasn't really doing its job.

8 Q All right. And, once the scene was cleared,
9 all those cruisers that were protecting that crime
10 scene were now gone, right?

11 A Yes.

12 Q And all the cruisers were gone by about 7:50
13 in the morning, 7:50, 7:55?

14 A Yes.

15 Q So before 8:00 a.m., that crime scene was
16 completely -- I'm sorry. After 8:00 a.m., that crime
17 scene was completely open?

18 A Yes.

19 Q Unsecured?

20 A Yes.

21 Q And available to anybody who wanted access to
22 it?

23 A Correct.

24 Q One of the reasons to secure a crime scene is
25 to minimize the possibility of evidence destruction on

1 one hand, correct?

2 A Yes.

3 Q And evidence tampering on the other hand,
4 right?

5 A Sure.

6 Q And examples of evidence tampering could be
7 just moving a piece of evidence?

8 MR. LALLY: Objection, Your Honor.

9 THE COURT: That's overruled. Not too much
10 further with this.

11 MR. JACKSON: I've just got a couple of quick
12 questions about this.

13 THE WITNESS: Would you repeat that, please?

14 BY MR. JACKSON:

15 Q Sure. An example or a couple of examples of
16 evidence tampering could be something as simple as
17 moving a piece of evidence, moving it from here to
18 here, correct?

19 A That would be tampering with evidence, yes.

20 Q Hiding evidence? Getting rid of it, right?

21 A Yes.

22 Q Taking evidence out of the scene or putting
23 evidence back into the scene, correct?

24 A Yes.

25 Q Or even planting evidence that didn't exist

1 before? All of those would be examples of tampering
2 with evidence?

3 A Yes.

4 Q And setting up a proper crime scene minimizes
5 or eliminates the possibility for that?

6 A Setting up a crime scene would -- could you
7 say that again, please?

8 Q Sure. Setting up a proper crime scene,
9 securing a proper crime scene minimizes or tries to
10 eliminate the possibility of that type of evidence
11 tampering, obviously?

12 A It would. But, at this point in time, we
13 weren't aware -- at this point in time, state police
14 had said they weren't responding. So there was no
15 longer an area to preserve at that point.

16 Q So in your mind -- well, let me phrase it a
17 different way. What that means is after 8:00 a.m.,
18 that scene was just open?

19 A It was.

20 Q You found both the blood that we saw pictures
21 of and the cocktail glass that we were just introduced
22 to this morning, correct?

23 Q Yes.

24 Q You searched the area that was adjacent to
25 where you believed the body was; is that right?

1 A We searched, I would say, about a 6x6 or 7x7
2 area.

3 Q 6x6 or 7x7?

4 A Roughly. Six feet on each side.

5 Q Right. You were looking for anything,
6 obviously, that was out of place, anything that didn't
7 belong, right?

8 A Yes.

9 Q Like a man's Size 12 shoe would have caught
10 your attention?

11 A It would.

12 Q A black baseball hat would have caught your
13 attention?

14 A It would.

15 Q A piece of plastic, broken, probably would
16 have caught your attention?

17 A Yes.

18 Q Certainly 45 pieces of plastic would have
19 caught your attention?

20 A Yes.

21 Q And between you and Officer Saraf, Sergeant
22 Goode, Officer Mullaney, Lieutenant Gallagher, none of
23 that was found?

24 A The only things we found were the stuff --
25 were the things that were documented.

1 Q You did find the blood, however; is that
2 right?

3 A Yes.

4 Q Who literally physically leaned down and
5 scooped that blood up?

6 A Me.

7 Q And that was done in a plastic Solo cup that
8 we've heard a little bit about; is that right?

9 A Yes.

10 Q You're aware that those Solo cups are
11 unsealed?

12 A I believe Lieutenant Gallagher got them out of
13 a sealed package.

14 Q When I say "unsealed," I mean they don't have
15 a lid on them. They're not airtight containers?

16 A Correct.

17 Q So once you scoop up the snow and the dirt and
18 the debris, the grass and everything else along with
19 the blood, they're just open to the air?

20 A There was snow and blood. There was no dirt
21 and debris and grass that I can recall.

22 Q You're sure about that? There was no dirt and
23 snow?

24 A I didn't observe any, no.

25 Q You didn't observe any dirt in the snow? You

1 don't think there's dirt in snow?

2 A I didn't observe any dirt in the glass.
3 Excuse me. The cup.

4 Q It certainly wasn't a sterile cup?

5 A No.

6 Q It certainly wasn't a crime scene cup?

7 A No.

8 Q You're aware that the Massachusetts State
9 Police Crime Lab warns against collecting any
10 biological material in anything made of plastic,
11 correct? Were you aware of that?

12 A No.

13 Q After the -- well, when you scooped up the
14 blood, did you videotape that process so we know
15 exactly which bloodstain was scooped up from where?

16 A I don't recall if it was videotaped, but we
17 did not document which scoop went in which cup.

18 Q Okay. So if there was multiple contributors
19 to blood -- sorry -- multiple contributors of the
20 blood, we sort of have no idea which blood drop
21 belonged to whom, correct?

22 MR. LALLY: Objection.

23 THE COURT: Sustained.

24 BY MR. JACKSON:

25 Q Once these unsealed cups were in your

1 possession, what did you do with them?

2 A The cups were placed into the Toyota Tundra
3 that I was driving that day and ultimately returned
4 back to the police station.

5 Q Okay. And you talked a little bit about the
6 process once you returned back to the station. They
7 were put in a brown evidence bag, correct?

8 A Yes.

9 Q And, ultimately, when you logged these items
10 into the -- tell me the name of it again? It's the
11 temporary evidence?

12 A Temporary -- excuse me. The blood was put in
13 a temporary evidence refrigerator.

14 Q Okay. Inside the evidence bag? In other
15 words, the cups are still inside the evidence bag and
16 it's logged in?

17 A I don't recall that. I'm not sure if I took
18 them out or not. I don't recall.

19 Q You indicated that there is an item number or
20 a property number that's assigned to them?

21 A Yes.

22 Q There is generated a seal or a label to go on
23 the evidence that's being stored, correct?

24 A It should, yes.

25 Q And the bag is sealed. The evidence bag is

1 sealed like this red tape that we see on this thing,
2 correct?

3 A When possible, there are certain items that
4 can't be bagged. Sometimes you create a tag and attach
5 it to the bag.

6 Q Right. But, if it's a brown paper bag that's
7 an evidence bag, you certainly just fold over the edge
8 of it and just put a red evidence seal on it to make
9 sure that that's secure and not tampered with, correct?

10 A That would be one way to do it, yes. I don't
11 recall if I left them in the bag or took them out of
12 the bag. I don't recall.

13 Q If you left them in the bag, you likely would
14 have -- if you're booking them into evidence, you
15 likely would have used some red crime scene -- I mean,
16 not crime scene tape -- evidence tape?

17 A If I had left them in the bag, I would have
18 put the property label right on the bag.

19 Q So everybody could see it?

20 A Yes.

21 Q Okay. There is an evidence bag with important
22 evidence in it. Don't mess with it. It's secure,
23 correct?

24 A Yes.

25 MR. JACKSON: Can we have Tab 23?

1 BY MR. JACKSON:

2 Q Do you recognize what's depicted in this
3 exhibit?

4 A I believe it's Ms. Read's vehicle.

5 Q For the record, you're looking at what's been
6 previously marked as Exhibit 37. Do you see a little
7 white rag down there by the right rear quarter panel?

8 A Yes.

9 Q Let's go to Tab 24. Do you see that white
10 rag?

11 A Yes.

12 Q I'm sorry?

13 A Yes.

14 Q Did you see a bag sitting next to it?

15 A I do.

16 Q It doesn't look like an evidence bag, does it?

17 A No. It looks like a Stop & Shop bag.

18 Actually, it looks like an evidence bag. It just
19 doesn't say "Canton Police" on it. It says "Stop &
20 Shop." But it does look like an evidence bag. It's
21 the same thing.

22 Q That's a grocery bag?

23 A It is. And that's exactly what our evidence
24 bags look like. So that's what I thought it was at
25 first.

1 Q Right, except it doesn't say anything about
2 evidence on it. It says "Stop & Shop"; correct?

3 A Correct.

4 Q What do you think's in that evidence bag --
5 I'm sorry -- the Stop & Shop bag?

6 A I'm not sure.

7 Q Are you aware when these pictures were taken?

8 A I can tell that's the Canton Police sally
9 port. So it's some point after the state police had
10 seized the vehicle.

11 Q And, at some point after you had brought the
12 Solo cups back to the station?

13 A Correct.

14 Q As a matter of fact, these were taken on
15 February 1st when the Massachusetts State Police Crime
16 Lab finally took possession of these items of evidence,
17 correct?

18 A I was not in the police station for those two
19 days.

20 Q Let's look at the next tab, Tab 25. Do you
21 recognize that?

22 A It appears to be Solo cups with a substance
23 inside.

24 Q Are those just any Solo cups or the Solo cups
25 that you took back to the station from 34 Fairview?

1 A I mean, I couldn't say definitively, but it
2 certainly looks like it.

3 Q It appears that they have red liquid material
4 floating in the bottom?

5 A Yes.

6 Q Does that appear to be blood?

7 A The top three I can see. Yeah. The only two
8 I see that don't have it are the bottom two left.

9 Q Okay. Let's look at the next tab, which is
10 26. And do you see somebody with gloved hands opening
11 that bag, the same bag with the white rag right there?

12 A I do.

13 Q Okay. Does that appear to be the same six
14 Solo cups?

15 A That you just showed me in the previous slide?

16 Q Yes.

17 A Yes.

18 Q Are those the same six Solo cups that you
19 gathered at the scene at 34 Fairview and ultimately
20 brought back to Canton P.D.?

21 A They certainly appear like they are, but I
22 can't say definitively, but --

23 Q And the reason you -- I'm sorry. I didn't
24 mean to step on your words. Go ahead. Finish it.

25 A They appear to be the same Solo cups, but I

1 couldn't say definitively.

2 Q Let's go back to Tab 24. And the reason you
3 can't say definitively, Lieutenant, is because there is
4 no label on this bag, is there?

5 A Not on that side of it, no.

6 Q There is no property number on this bag, is
7 there?

8 A Not on the side that's visible to me, no.

9 Q There is no evidence tape on this bag, is
10 there?

11 A Not on the side that's visible to me, no.

12 Q Well, let's look at the other photographs.
13 Are you -- well, before we do that, are you suggesting
14 that all of that material is on the other side of this
15 bag?

16 A I don't know. I'm not suggesting anything.
17 I'm telling you I don't know.

18 Q Okay. Let's look at the next tab. Looking at
19 it from the top, does it appear anywhere from that
20 vantage point that there is evidence tape that's ever
21 been put on that bag, that has ever been secured?

22 A I wouldn't be able to tell you that.

23 Q Well, one of the ways that you can tell that
24 evidence tape has been put on an item is because when
25 the evidence tape is placed on it, it's completely

1 sealed. And if, in fact, that seal is ever broken,
2 it's not torn off; it's cut and there are initials put
3 on, correct?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q Have you ever used evidence tape before to
8 seal anything?

9 A I'm sure I have. I don't recall off the top
10 of my head.

11 Q How long have you been a detective? I'm
12 sorry. How long were you a detective when you were a
13 detective?

14 A I was a detective for 11 months as a sergeant
15 and then I was a detective for 15 months back in 2011-
16 12.

17 Q And in your experience -- and how long have
18 you been a police officer?

19 A Over 24 years.

20 Q So in your 24 years of experience and over a
21 year as a detective, you can't remember if you ever
22 used evidence sealing tape?

23 A As I said, I'm sure I have. I just can't
24 recall one off the top of my head.

25 Q If you believe -- if you can recall using it

1 at all, isn't the protocol that when evidence sealing
2 tape is used to seal an item of evidence, when it's
3 removed, it's not torn off, it's cut and then new
4 sealing tape is put over it with an initial and a date,
5 correct?

6 MR. LALLY: Objection.

7 THE COURT: Do you know the answer to that?

8 THE WITNESS: I don't.

9 THE COURT: Okay. Next question.

10 MR. JACKSON: Thank you.

11 BY MR. JACKSON:

12 Q That's all I have for this.

13 THE COURT: I am going to see counsel at
14 sidebar for just a minute, please.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 THE COURT: So I didn't want to interrupt you
18 and embarrass you. You don't put anything up on
19 that screen without my permission. You did it five
20 times: Let's go to Tab 1. Let's go to Tab 2.

21 MR. JACKSON: I thought if it was in evidence
22 we were free to --

23 THE COURT: You don't just freely walk about
24 the courtroom and put up displays.

25 MR. JACKSON: Where would you like me --

1 THE COURT: Mr. Yannetti should have told you
2 that.

3 MR. JACKSON: How would you like me to -- what
4 is the proper protocol to ask --

5 THE COURT: You ask me for permission to put
6 something up on the screen.

7 MR. JACKSON: Okay. Okay.

8 THE COURT: Mr. Yannetti, you have a role with
9 pro hac vice to let them know --

10 MR. YANNETTI: I understand.

11 THE COURT: All right. The jury needs a
12 break.

13 MR. JACKSON: I've got about, just so the
14 Court knows --

15 THE COURT: Jurors, go ahead and let's take a
16 10-minute break. Okay?
17 (Whereupon, the jury is escorted from the courtroom
18 for a brief recess and the sidebar conference
19 continues as follows:)

20 MS. LITTLE: The same question by a different
21 witness in the same position yesterday.

22 MR. JACKSON: Just so the Court knows, I have
23 maybe 10 minutes left, no longer.

24 THE COURT: And yours will be very short?

25 MR. LALLY: Yes.

1 THE COURT: All right. I'd really like to not
2 bring him back again tomorrow.

3 MR. LALLY: No.

4 THE COURT: Will we start with another
5 witness?

6 MR. LALLY: I think we can probably get
7 through with Lieutenant Rae.

8 MR. YANNETTI: I was going to suggest, Your
9 Honor, I would really like the Court to rule on the
10 photos I brought up at the start of the day
11 yesterday because I think there is a chance Caitlin
12 Albert could be called tomorrow.

13 MR. LALLY: I doubt it.

14 MR. YANNETTI: You doubt it?

15 THE COURT REPORTER: I can't hear.

16 MR. YANNETTI: I had just said that I was
17 hoping for a ruling on the photos that I had
18 brought up at the start of the day yesterday. I do
19 have further oral argument to make outside the
20 presence of the jury.

21 THE COURT: Why don't you make it right now.

22 MR. YANNETTI: Can I get my notes?

23 THE COURT: Are there pages and pages or is
24 this --

25 MR. YANNETTI: There's three pages, Judge.

1 THE COURT: Mr. Yannetti, I don't need to hear
2 three pages of argument.

3 MR. YANNETTI: Here is the thing: All right.
4 Let me just try to encapsulate it. I thought that
5 it would be appropriate to discuss what orders have
6 been in place regarding reciprocal discovery. This
7 Court is free to make any orders it wants at any
8 time, and I recognize that. But I wanted to
9 explain the reason why we didn't reveal the photos
10 that were previously marked "H," "I," "J" and "K"
11 previously.

12 And, you know, it was our view that there was
13 no specific reciprocal discovery order that
14 required the provision to the Commonwealth of
15 material that we deemed to be impeachment evidence.
16 It would have been within this Court's purview to
17 order it. And, as I said, the Court can order it
18 now if it has not been ordered to this date, and I
19 recognize that. But that was the reason for that.
20 So with regard to those four photos, I understand
21 the Court's ruling that those were inadmissible to
22 use against Ms. McLaughlin.

23 My position, our position, is that we are in a
24 much different position with regard to Caitlin
25 Albert, not only with regard to those four photos

1 because now the Commonwealth is not surprised.
2 They have time to prepare here and that topic of
3 conversation would be a part of our examination
4 anyway.

5 But also with regard particularly to these new
6 photos that we just received over the weekend.
7 There has been no discovery violation with regard
8 to that. I have a list on my desk of all of the
9 discovery that the Commonwealth has proved to us
10 that continues to come in on a daily basis since
11 this trial has started. So you know, clearly, this
12 is not something that we held back. It's new.
13 It's relevant. And, you know, the Court had
14 indicated yesterday that, you know, it may be
15 cumulative. I would take issue with that because
16 there has been no photo introduced of their
17 relationship and there has been an attempt by
18 Ms. McLaughlin to minimize that relationship.

19 These photos not only prove that she was
20 minimizing it but, in my view, proof that she was
21 lying on the stand about the nature of the
22 relationship. She had said specifically two
23 things: number one, that she hadn't had any contact
24 with Caitlin Albert in the last two or three years.
25 Come to find out, we have a photo from eight months

1 prior to January of 2022 where there is a limited
2 number of people in a photograph and Caitlin Albert
3 and Katie McLaughlin had their arms around each
4 other at a baby shower.

5 You know, in addition -- Liza, what was the --

6 MS. LITTLE: The statement.

7 MR. YANNETTI: Oh, yeah. She had also said
8 that they had only take day trips together to the
9 beach in a group.

10 We have a photo of them in Maine, four hours
11 away, drinking in a hot tub, which clearly is not
12 just a one-day trip. And then we have photos with
13 the four of them together where she is with
14 Caitlin Albert's two college roommates. So there
15 is Caitlin Albert and her two roommates and
16 Katie McLaughlin.

17 You know, she started off her testimony by
18 saying, I went to school with somebody by that
19 name. That's like saying, you know, I know
20 somebody who raised me who happens to be a woman
21 and is married to my father. I mean, she
22 misrepresented the relationship. This is central
23 cross-examination material and these exhibits are
24 relevant. There has been no discovery violation,
25 and I seek to use them during their cross of

1 Caitlin Albert.

2 THE COURT: What do you say?

3 MR. LALLY: Your Honor, what I would say is
4 there absolutely has been a discovery violation.
5 The Commonwealth filed a motion for reciprocal
6 discovery, which the Court -- I don't know if it
7 was acted on as far as writing on the order, but it
8 is specifically stated to counsel to provide those.

9 The subsequent do absolutely nothing to
10 further any point as far as Firefighter McLaughlin.
11 And I remind counsel that it is a firefighter and
12 that's how she's involved in this case and comes to
13 the scene in the first place.

14 Frankly, the cross-examination -- I'm going to
15 leave it at that because I don't want to say
16 something that I may regret.

17 But, with regard to -- most of this is
18 cumulative. The other sort of photographs that are
19 in here are -- you know, they went to high school
20 at the same time, which Firefighter McLaughlin
21 acknowledged. They were on the same track team.
22 So were about 40 other people.

23 Every other photograph that's contained in
24 here is in a group setting, which is what
25 Firefighter McLaughlin acknowledged. There is

1 absolutely no evidence whatsoever of any
2 prevarication, any lying, anything mentioned in any
3 -- in front of this Court and flat-out accused
4 Firefighter McLaughlin of doing. There is no
5 evidence of that in those photographs, the other
6 photographs or anything about her testimony. And,
7 frankly, it's repulsive.

8 THE COURT: All right. So I'm going to strike
9 the "repulsive" part.

10 All right. So I did find that there was a
11 violation of Rule 14. I know that counsel said
12 that you didn't intend to use it. But I disagree,
13 and I find that you did. So I will mark all of
14 these for identification. There are seven of them.

15 And I made an independent finding that they
16 are cumulative, that Mr. Jackson got the answers
17 that he was looking for and that the photos are not
18 inconsistent. So for all of those reasons, the
19 photos from the other day are out and these are
20 out.

21 MR. YANNETTI: Specifically with regard to
22 these --

23 THE COURT: Hold on.

24 MR. YANNETTI: I'm sorry.

25 THE COURT REPORTER: Do you want them as one

1 or --

2 THE COURT: I think one is easier.

3 MR. YANNETTI: With regard to the --

4 THE COURT: Hold on.

5 MR. YANNETTI: I'm sorry. I'm sorry.

6 (Whereupon, seven pages of photographs were entered
7 and marked Exhibit "S" for Identification.)

8 THE COURT: All right. What's your question,
9 Mr. Yannetti?

10 MR. YANNETTI: Just so I understand the
11 Court's ruling, with regard to those additional
12 photos that we received over the weekend, is the
13 Court ruling that they are excluded in part because
14 they, too, are a discovery violation?

15 THE COURT: I don't know where they came from
16 or who authenticates them. Did you get these,
17 Commonwealth?

18 MR. LALLY: I mean, when the Court did.

19 MR. YANNETTI: I had represented we received
20 these over the weekend and, in fact, we got --

21 THE COURT: Unknown sources.

22 MR. YANNETTI: Right.

23 THE COURT: And some are marked. Tori, can I
24 have that, please? Thank you.

25 So I don't hear anything right now that would

1 make these admissible. You need to question the
2 witness first. I don't have your discovery motion
3 in front of me, Mr. Lally. Did it include
4 impeachment material?

5 MR. YANNETTI: I can speak to that because I
6 reviewed it. It did. If that motion was allowed,
7 then my reading of the motion is that these, not
8 these but the previous four photographs, should
9 have been turned over. But I also --

10 THE COURT: Okay. The motion was allowed
11 because I remember saying I knew you had to wait
12 until a certificate of compliance --

13 MR. YANNETTI: Right.

14 THE COURT: And I said that the Commonwealth's
15 motion is allowed, is my understanding, and you had
16 to get it immediately. I think I said two days. I
17 didn't know that even Ms. Little complied much
18 sooner than that.

19 MR. YANNETTI: Right.

20 THE COURT: And I really would rather handle
21 it in his testimony. Do you need much more time on
22 this, hearing from all three? Actually, just the
23 two of you.

24 MR. YANNETTI: Well, I was just going to
25 explain, Your Honor, that I checked the docket.

1 The motion was not endorsed, but I don't question
2 what the Court just said.

3 THE COURT: Okay. I remember specifically --

4 MR. YANNETTI: Okay.

5 THE COURT: -- the two-day part.

6 MR. YANNETTI: That's fine.

7 THE COURT: Why don't we just continue. If
8 you come up with another argument before the
9 witness testifies, you can tell me about it.

10 MR. YANNETTI: Okay. Thank you.

11 THE COURT: I really don't want to waste
12 anymore time.

13 MR. YANNETTI: I understand. I understand.

14 THE COURT: So we won't get a break. We'll
15 just bring the jury in. Okay?

16 MR. YANNETTI: Fine.

17 (Whereupon, the jury enters the courtroom and is
18 seated in the jury box.)

19 THE COURT: All right, Mr. Jackson. Whenever
20 you're ready.

21 MR. JACKSON: Thank you, Your Honor. That's
22 all I have at this time.

23 THE COURT: Mr. Lally?

24 MR. LALLY: Thank you, Your Honor.

25 REDIRECT-EXAMINATION

1 BY MR. LALLY:

2 Q Just briefly, sir. With regard to the
3 incident you were asked about from August of 2002, can
4 you explain in your own words what happened?

5 A So I had left the establishment. Centerfield
6 is what it was called at the time. And the owner had
7 asked me if I could drive a patron home who had had too
8 much to drink. So I obliged. I walked across the
9 street to the parking lot, got in my truck with the
10 patrol. And, as I was pulling out, that's when
11 Mr. Albert approached my truck and told me how he had
12 been in an altercation earlier in the evening with Mark
13 LoPilato and that Mark had made threats towards him and
14 his family that he was going to harm his family. They
15 had a young child at the time. Mr. Albert was
16 concerned and asking me what he should do.

17 As I was telling him what I think he should
18 do, he said something to the effect of, oh, no, here
19 they come. And I observed multiple men walking down
20 the sidewalk in our direction.

21 At this point, I got out of my truck,
22 approached the group and pleaded with them. I said,
23 guys, not tonight. He's by himself. He's with his
24 wife -- excuse me -- girlfriend. There is not going to
25 be a fight tonight, and I did my best to defuse the

1 situation. But they weren't having it. They made
2 several attempts to push past me. Ultimately, a
3 wrestling match ensued. Mr. LoPilato at one point
4 said, I know who you are. I don't give a fuck, and
5 asked me what I was going to do about it.

6 A wrestling match ensued. I was punched.
7 And, at that point, I defended myself and did engage in
8 a physical altercation with Mark.

9 Q Now, you were asked about sort of timing about
10 reports. You didn't write a report until a couple of
11 days later; is that correct?

12 A That's correct.

13 Q And why was that?

14 A I had spoken to the shift supervisor that
15 night, and I asked him if he wanted me to return and
16 generate a report at that point. And he advised me
17 that I could do it the next time I was at work, which
18 was a couple of days later.

19 Q And, as far as the police responding to that
20 parking lot that night, how were they notified, if you
21 know?

22 A I had yelled across the street when the group
23 was trying to push its way past me. I yelled across
24 the street to -- the bartender and the owner had made
25 their way out onto the sidewalk/street area. I yelled

1 across the street and I said, call the police, call the
2 police. And they ultimately called 911.

3 Q Now, what, if any, relevance or factor did any
4 of that have in your minds in regard to your response
5 and interviews or anything that you did on January
6 29th, 2022?

7 A Absolutely nothing.

8 Q And, in fact, that involved a Christopher
9 Albert in 2002, correct?

10 A Yes, it did.

11 Q And you were at Brian Albert's residence in
12 2022, correct?

13 A Correct.

14 Q And, just to be clear, just because their last
15 name is Albert, they are separate people. You have
16 separate relationships with each of those persons,
17 correct?

18 A Yes.

19 Q Now, you grew up in the town. You work in the
20 town. Fair to say you go to calls regarding people
21 that you know?

22 A Yes.

23 Q Whether that be witnesses, people that you
24 arrest, any of the like, correct?

25 A Correct.

1 Q Now, with regard to the questions that you
2 were asked about Mr. O'Keefe, just to be clear, you
3 never laid eyes on Mr. O'Keefe's body at any point in
4 time on January 29th or thereafter, correct?

5 A No, I didn't.

6 Q You were asked some questions on the cruiser
7 cam video whether you were on the phone. You indicated
8 that you could make an educated guess as to who you
9 were on the phone with. Who would that be?

10 A Lieutenant Gallagher.

11 Q And so at the time that you're on the phone
12 from that video, Lieutenant Gallagher was not on scene
13 yet, correct?

14 A Correct.

15 Q Now, with respect to the weather on that day,
16 you talked a bit about sort of the weather as you were
17 on scene. During the time that you were on scene, did
18 it essentially persist in the same manner?

19 A Yes.

20 Q And then later on that day, what, if any,
21 change occurred with regard to the weather?

22 A As I recall, while we were there, it stayed
23 the same. If anything, it might have gotten even
24 worse.

25 Q And, from your memory of that day, did that

1 continue throughout the course of the day while you
2 were working?

3 A Yes.

4 Q Now, with regard to the house at 34 Fairview
5 Road, each of those occasions, if you could, with
6 respect to the three occasions that you went inside the
7 house to speak to people, where were those people
8 within the house?

9 A The first time I went in, Brian Albert and
10 Nicole Albert were located, I believe, on the stairs
11 or sitting possibly at some point on the stairs.
12 Jen McCabe was to my right.

13 The second time I went back in was also
14 through the front door, and it was the same
15 positioning, except this time Matt McCabe was present,
16 and Matt was also to my right.

17 Q And then on the third occasion when yourself
18 and Lieutenant Gallagher came back to speak to
19 Ms. McCabe further?

20 A We went in through the door to the right. So
21 it's to the right of the main door. We went in through
22 that door and stayed in like the dining/kitchen area.
23 And that's where I spoke with Jennifer.

24 Q And that third time that you went back and you
25 spoke with Jennifer, where was Brian Albert, Nicole

1 Albert, Matthew McCabe, any of those parties that were
2 there before, if you know?

3 A They were present. I actually don't recall if
4 Matthew McCabe was there the third time. Brian and
5 Nicole were definitely there. I believe they were in
6 the general vicinity, but I couldn't tell you exactly
7 where they were.

8 Q And the same thing when you went back on that
9 third occasion? What, if anything, did you note as far
10 as the interior of the house? Anything askew?
11 Anything out of place?

12 A No. Everything looked to be in order.

13 MR. LALLY: Nothing further, Your Honor.

14 MR. JACKSON: May we approach very briefly?

15 THE COURT: Yes.

16 (Whereupon, there was a sidebar conference as
17 follows:)

18 MR. JACKSON: Your Honor, the Court's order to
19 me, to the defense, was that we were not to get
20 into the specifics of the actual fight, which I
21 closely guarded against and I did not. Mr. Lally
22 just did exactly what the Court ordered me not to
23 do. He said, tell us what happened involving this
24 fight, giving him the detail of how he was punched
25 first. He was attacked first. There was foul

1 language used. There were threats used, and all he
2 did was defend himself.

3 With the Court's permission, I intend to ask
4 three questions: Number one, you just described a
5 situation in which two men assaulted a police
6 officer basically in front of other police
7 officers. They were never convicted of anything.

8 I won't go into it any further, but I'd like
9 to say they were not convicted. Mr. Lally has
10 indicated that they were charged, but I think the
11 other side of that coin is but they weren't
12 convicted.

13 The second thing I'd ask is he made a
14 statement, saying, whoever you are, I'm going to
15 make your life miserable. And that's on the
16 record. He didn't admit or deny it.

17 And then the third thing is simply wrapping it
18 up with this was in furtherance of you coming to
19 Chris Albert's aid.

20 THE COURT: All right. How do you respond,
21 Mr. Lally?

22 MR. LALLY: So, Your Honor, as it pertains to
23 -- I didn't have any indication. There was no
24 indication that anybody was arrested, charged or
25 anything as it pertains to LoPilatos. So whatever

1 happened with the case is not relevant and germane.

2 As far as what I did with the witness was in
3 response to Mr. Jackson's questions which,
4 understandably on cross-examination, they can be
5 leading. But essentially he led him through a
6 certain narrative that I did not believe to be
7 accurate. And so I asked the witness what his
8 recollection of that narrative is. That has
9 nothing to do with any of the subsequent trial
10 intimidation charges or anything of that like.

11 You know, I think as far as his -- and I'm
12 sorry. I can't recall exactly what your questions
13 were again.

14 MR. JACKSON: The main thing that I would need
15 the Court's guidance on or alert the Court to is I
16 want to be able to ask him, given the narrative
17 that he just described for Mr. Lally, anybody,
18 anybody, would expect that he would have been
19 charged and convicted. I simply want to be clear
20 they were not convicted of anything which suggests
21 that his narrative is spinning the facts in his
22 favor.

23 THE COURT: So tell me the question again? I
24 don't want five questions. You said there were
25 three questions. I don't want five on the same

1 topic.

2 MR. JACKSON: Right.

3 THE COURT: What is the first question?

4 MR. JACKSON: You claimed, in Mr. Lally's
5 questions, you claimed that you were specifically
6 physically assaulted by -- the fact of the matter
7 is they were never convicted of anything having to
8 do with assault on a police officer.

9 THE COURT: What was the second question?

10 MR. JACKSON: You indicated that they said to
11 you, and I will adopt my language accordingly, I
12 don't give an "F" what we do. You know, I'm going
13 to continue to fight you anyway.

14 On record what was said was he said to them, I
15 don't know who you are, but I'm going to make your
16 life miserable.

17 THE COURT: All right. So let me hear the
18 first question again? I thought the first time he
19 said something like this happened in front of
20 several police officers.

21 MR. JACKSON: Right. Your claim is that you
22 were assaulted in front of other police officers.
23 They were never convicted of anything having to do
24 with assault on a police officer or anything else.

25 THE COURT: Regarding this incident.

1 MR. JACKSON: Regarding this incident. Yes.

2 THE COURT: I'm going to allow it, Mr. Lally.
3 And I feel bad. It's the one time he did not
4 really ask any leading questions and all of this
5 came in. So I'll allow the "in front of police,"
6 you know. The first time you worded it was the
7 best.

8 MR. JACKSON: Okay.

9 THE COURT: I don't want you to get into all
10 the details that Mr. Lally -- just in response to
11 Mr. Lally's question.

12 MR. JACKSON: Right.

13 THE COURT: And the second one was?

14 MR. JACKSON: You actually said to them, I'm
15 going to make your life miserable.

16 THE COURT: Okay. All right. I'm going to
17 allow it.

18 (Whereupon, the sidebar conference concluded.)

19 MR. JACKSON: May I, Your Honor?

20 THE COURT: Yes.

21 MR. JACKSON: Very briefly.

22 RE CROSS-EXAMINATION

23 BY MR. JACKSON:

24 Q Lieutenant Lank, you indicated that you
25 claimed in your description that you were assaulted by

1 the LoPilato brothers, correct?

2 A Yes.

3 Q The fact is they were never convicted of
4 anything having to do with this case, the case that
5 you're describing; isn't that true?

6 A Correct.

7 Q You also indicated that they made either a
8 threatening comment to you or disparaging comment to
9 you about "I don't give a fuck"; correct?

10 A Correct.

11 Q Isn't it true that what was actually said was
12 you said to them, I don't know who you are, but I'm
13 going to make your life miserable?

14 A No.

15 Q All of this incident was in furtherance of you
16 protecting a member of the Albert family when they
17 asked for your help, correct?

18 A No. It was me protecting someone who asked
19 for my help who was clearly in fear.

20 Q Who happened to be an Albert?

21 A Happened to be an Albert.

22 MR. JACKSON: Thank you.

23 THE COURT: All right. You are all set.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness is excused.)

1 THE COURT: Let's try to get some testimony
2 from one more witness.

3 MR. LALLY: Yes, Your Honor.

4 THE COURT: Jurors, we will break right at
5 1:00. Let's see if we can get more testimony in.

6 Who is your next witness?

7 MR. LALLY: Your Honor, the Commonwealth would
8 call Lieutenant Charles Rae.

9 Whereupon,

10 CHARLES RAE

11 having been first duly sworn, was examined and
12 testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MR. LALLY:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q Could you please state your name and spell
18 your last name for the jury, please?

19 A Charles Rae, R-A-E.

20 Q And how are you employed, sir?

21 A I work for the Canton Police Department.

22 Q And how long have you been a member of the
23 Canton Police?

24 A Approximately 25 years.

25 Q And what rank or assignment do you currently

1 have with the Canton Police?

2 A I'm a lieutenant.

3 Q And how long have you had the rank of
4 lieutenant with the Canton Police?

5 A I've been a lieutenant for about nine years.

6 Q And what, if any, sort of specialized duties
7 or assignments do you have within the Canton Police
8 Department?

9 A Day-to-day, it would be patrol shift
10 commander. Some ancillary duties include overseeing
11 the family services unit, which includes juvenile
12 services, school resource officers, sexual assault
13 investigation and special populations.

14 Q And, if I could turn your attention to January
15 29th, 2022, were you working that day?

16 A I came in to work the day shift at about
17 7:30 a.m.

18 Q And what is the day shift of the Canton
19 Police?

20 A 7:45 a.m. to 3:45 p.m.

21 Q And, when you arrived that day at the
22 department, what, if anything, was sort of going on at
23 the department that day when you arrived?

24 A Well, there was a well-forecasted snowstorm.
25 It was in the early stages. So when I came in, there

1 was a lot of, as there usually is, a shift change, a
2 lot of comings and goings, people leaving the shift,
3 people coming onto the shift. It was a busy dispatch
4 area at that time.

5 Q And, at some point after you arrived at work,
6 were you made aware of a call that your department had
7 been dispatched to shortly after 6:00 a.m. on that
8 date?

9 A Correct.

10 Q And just in general terms, what was it that
11 you learned about that call?

12 A The outgoing shift sergeant, when he returned,
13 usually there is a roll call. I believe that day I
14 don't recall there being a roll call. But there was
15 exchange of information, as there typically is in the
16 dispatch area. I was advised that there was an
17 unresponsive man found in the snow on Fairview Road.

18 Q And that outgoing shift supervisor was who?

19 A Sergeant Sean Goode.

20 Q And what, if any, information were you given
21 as far as the unresponsive male?

22 A That he was a Boston police officer. He was
23 found at 34 Fairview Road.

24 Q Let me ask you this. At some point, did you
25 learn what his name was?

1 A Yes.

2 Q And who did you learn him to be?

3 A Mr. John O'Keefe.

4 Q And were you familiar with Mr. O'Keefe?

5 A I'd never met him before, no.

6 Q At some point, did you become aware of where
7 he lived?

8 A Yes.

9 Q And, from what you had learned from
10 Sergeant Goode, in addition to Mr. O'Keefe being
11 transported from the scene to the hospital, who, if
12 anyone else, was transported from the scene to the
13 hospital?

14 A I was advised that his girlfriend was on the
15 scene, as well, and she was subsequently transported to
16 Good Samaritan Hospital, the same hospital that
17 Mr. O'Keefe was transported to.

18 Q And, at some point over the course of that
19 morning, did you become aware of any children that
20 Mr. O'Keefe was responsible for as far as legal
21 guardianship?

22 A Yes. I was made aware that he was the
23 guardian of two young children that may or may not be
24 at the house at that time unattended, given the fact
25 that both he and his girlfriend were transported.

1 Q And, based on that information, what, if
2 anything did you decide to do?

3 A I'm not sure if it was a suggestion of the
4 former chief or if it was just something that
5 organically developed. But it seemed like the right
6 thing to do, to do a well-being check of the children
7 at One Meadows Ave., which was Mr. O'Keefe's residence.

8 Q And just with respect to the former chief,
9 specifically, who are you talking about?

10 A Ken Berkowitz.

11 Q And a well-being check, if you could describe
12 to the jury sort of what is involved in that and what
13 does it entail as it applies to this situation?

14 A As it applies to this situation, we believe
15 that there may be two young, unattended children. And,
16 knowing that both Mr. O'Keefe and Ms. Read wouldn't be
17 returning to the house anytime soon, we wanted to check
18 on them so if they woke up, wondering where everybody
19 was and need some assistance that perhaps we could
20 provide that and help locate other loved one or bring
21 them to the police station if we had to, just to kind
22 of provide some sort of comforting presence.

23 Q And, within the Canton Police Department, is
24 there a specific cruiser that's allocated for sort of
25 the shift supervisor?

1 A Yes. 682.

2 Q And is that the cruiser that you used to go to
3 One Meadows Ave.?

4 A We did.

5 Q And, when you say "we," who, if anyone, went
6 with you?

7 A Sergeant Meehan. He was the incoming
8 sergeant.

9 Q And what, if any, role does Sergeant Meehan
10 have with regard to the department, specific role?

11 A Now he's a detective sergeant and prosecutor.
12 At that time, he was a shift sergeant.

13 Q Okay. And so the 682 cruiser that you were
14 driving, are you aware that that has a cruiser camera
15 affixed to it?

16 A Correct.

17 Q Have you had occasion to review that footage
18 from that particular cruiser on that particular
19 morning?

20 A I have now, yes.

21 MR. LALLY: Your Honor, if I could ask to
22 publish for the jury a portion of Exhibit 41?

23 THE COURT: You may.

24 MR. LALLY: Ms. Gilman, if I could have that
25 on the screen and if I could ask, Ms. Gilman, if

1 you could fast forward to 2:03:53.

2 (Whereupon, the video is played.)

3 BY MR. LALLY:

4 Q And what's up on the screen right now,
5 Lieutenant? Do you recognize what that is?

6 A That would be the interior of Sally Port Door
7 3, which is where the 682 would have been parked.

8 Q And then from there is where you drove from
9 that position to One Meadows Ave., correct?

10 A Correct.

11 MR. LALLY: Ms. Gilman, if you could just run
12 it for about a minute or so?

13 (Whereupon, the video is played.)

14 MR. LALLY: Ms. Gilman, if you could pause it
15 there. Ms. Gilman, if you could, I would ask you
16 to fast forward to about 2:09:25 and if you could
17 play it from there, please.

18 (Whereupon, the video is paused and played.)

19 Q What's up on the screen, Lieutenant, do you
20 recognize that?

21 A Yes.

22 Q What do you recognize that to be?

23 A One Meadows Ave.

24 Q And sort of towards the middle of the screen?
25 Is that sort of the front door to the home; is that

1 fair to say?

2 A That's correct.

3 Q The door that you went to, is that the door or
4 did you go to a different door? If you know.

5 A I don't remember which door we went through.

6 Q Now, with respect to this home, had you ever
7 been there before?

8 A No.

9 Q Subsequent to this, did you come to learn also
10 that the residence of One Meadows Ave. had cameras of
11 its own?

12 A Yes.

13 Q And have you seen camera footage from both the
14 driveway and the front door from the residence from
15 that morning when you were there?

16 A Yes.

17 Q Now, as far as a well-being check, if you
18 could just sort of physically describe to the jury what
19 is it that you're doing with regard to a well-being
20 check when you come to a house like this?

21 A We are going to check to see if there is
22 anybody there, which is typically the case. And we are
23 going to go knock on doors and see if there is any
24 activity of anybody at the home.

25 MR. LALLY: And, Ms. Gilman, if you could hit

1 "play"?

2 (Whereupon, the video is played.)

3 MR. LALLY: If you could pause it there,
4 Ms. Gilman.

5 (Whereupon, the video is paused.)

6 Q Now, so it appears from this you pull into the
7 driveway at One Meadows Ave.; is that correct?

8 A Yes.

9 Q And there is a vehicle directly in front of
10 you, correct?

11 A Correct.

12 Q And, at the time, you were not aware of sort
13 of the particulars of the incident that occurred
14 earlier in the morning, correct?

15 A And fair to say from what's depicted up on the
16 screen, was that essentially what the driveway looked
17 like at that time when you pulled in there at
18 approximately 8:23 in the morning, correct?

19 A Yes.

20 Q And, as far as when you went to knock on the
21 door, are you just knocking on the front door and then
22 no one answers and that's it or do you look around the
23 house? What is it that you do on a well-being check?

24 A You would go to the front door or the door
25 that you think everyone would use at whatever the

1 situation was. You take a cursory glance around to see
2 if there is any reason to check anywhere else. In this
3 case, there is a fenced backyard. So I'm not going to
4 be going back there. In this case, we weren't looking
5 for someone that might be a dead body. We were looking
6 for two children that would be up and active.

7 Q Now, as far as that vehicle that's parked in
8 the driveway in front of you, did you have any reasons
9 to look at it, inspect it or anything like that at this
10 point that you're at the house?

11 A No.

12 Q And, as far as any condition of it,
13 specifically the right rear passenger side, you didn't
14 have any occasion to go inspecting that or looking at
15 it at that point, correct?

16 A Correct.

17 Q Now, as far as from this video, the condition
18 of the right rear passenger side and the condition vis-
19 a-vis the left rear passenger side, that is how it
20 appeared in the driveway when you pulled up, correct?

21 A Correct.

22 MR. LALLY: Ms. Gilman, if you could hit play?
23 (Whereupon, the video is played.)

24 MR. LALLY: If you could pause right there,
25 Ms. Gilman.

1 (Whereupon, the video is paused.)

2 Q I'm sorry. The individual who just sort of
3 walked across the front of the cruiser, do you
4 recognize that?

5 A Yes.

6 Q And who is that?

7 A That was me.

8 MR. LALLY: Your Honor, I'm not sure how --
9 may we approach?

10 THE COURT: Okay.

11 (Whereupon, there was a sidebar conference as
12 follows:)

13 MR. LALLY: I just want to -- scheduling. I
14 have a few more minutes of this video and then the
15 Ring videos, as well.

16 THE COURT: Okay. So we'll break. He has to
17 come back tomorrow. Okay.

18 (Whereupon, the sidebar conference concluded.)

19 THE COURT: Lieutenant, we are going to need
20 you back tomorrow. We are going to break for
21 today. If you could stay just for a minute,
22 please.

23 Jurors, that's it for today. We'd ask those
24 same three or I give you those same three cautions.
25 Please do not discuss this case with anyone. Don't

1 do any independent research or investigation into
2 this case. If you happen to see, hear or read
3 anything about this case, please disregard it. Let
4 us know. We'll see you tomorrow morning. So
5 report at 8:30 tomorrow.

6 (Whereupon, the jury is escorted from the courtroom
7 and excused for the day.)

8 THE COURT: You don't need me for anything,
9 right?

10 MR. LALLY: I don't, Your Honor.

11 MR. JACKSON: No.

12 THE COURT: All right. We'll see you tomorrow
13 morning.

14 (Whereupon, the Court adjourned.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 12-3 to 12-172, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 9th day of February, 2025.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist

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